

MONTANA LEGISLATIVE HISTORY

Chapter 430 19 2001

Bill H 564 S _____ Original bill & history X c

H. Committee on Business & Labor

Hearing Date(s) 2/16/2001 _____ C

_____ C

_____ C

_____ C

Date Out 2/17/2001 _____ C

S. Committee on Energy & telecommunications

Hearing Date(s) 3/20/2001 _____ C

_____ C

_____ C

3/27/2001 _____ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

House Floor

2/21 2nd Reading (passed)
2/22 3rd Reading (passed)

4/11 2nd Reading (Amd. concurred)
4/12 3rd Reading (Amd. concurred)

Senate Floor

3/30 2nd Reading (concurred)
3/31 3rd Reading (concurred)

Compiled on Jan 27, 2006

compiled by SJC

HOUSE BILLS AND RESOLUTIONS

525

3/26	2nd Reading Concurred on Voice Vote	37	0
3/27	3rd Reading Concurred	48	0
	Returned to House with Amendments		
4/12	2nd Reading Senate Amendments Concurred	90	9
4/13	3rd Reading Passed as Amended by Senate	86	14
4/13	Sent to Enrolling		
4/16	Returned from Enrolling		
4/19	Signed by Speaker		
4/21	Signed by President		
4/21	Transmitted to Governor		
5/01	Signed by Governor		
5/01	Chapter Number Assigned		
	Chapter Number 530		
	Effective Date: 10/01/2001 - All Sections		

HB 564 Introduced by Olson

LC1422 Drafter: Everts

Revise Universal Service Telecommunications Laws

2/13	Introduced		
2/13	Fiscal Note Requested		
2/13	Referred to Business and Labor		
2/16	Hearing		
2/17	Committee Executive Action--Bill Passed as Amended	11	8
2/17	Committee Report--Bill Passed as Amended		
2/19	Fiscal Note Received		
2/20	Fiscal Note Printed		
2/21	2nd Reading Passed	51	49
2/22	3rd Reading Passed	56	44
	Transmitted to Senate		
2/28	Referred to Energy and Telecommunications		
3/20	Hearing		
3/27	Committee Executive Action--Bill Concurred as Amended	8	3
3/27	Committee Report--Bill Concurred as Amended		
3/30	2nd Reading Concurred	31	16
3/31	3rd Reading Concurred	31	18
	Returned to House with Amendments		
4/11	2nd Reading Senate Amendments Concurred	95	3
4/12	3rd Reading Passed as Amended by Senate	59	41
4/12	Sent to Enrolling		
4/13	Returned from Enrolling		
4/17	Signed by Speaker		
4/19	Signed by President		
4/20	Transmitted to Governor		
4/30	Signed by Governor		
4/30	Chapter Number Assigned		
	Chapter Number 430		
	Effective Date: 4/30/2001 - All Sections		

HB 565 Introduced by R. Erickson

LC1455 Drafter: Heffelfinger

State Contribution for University Participation in TRS

1/03	Fiscal Note Needed		
2/13	Introduced		
2/13	Fiscal Note Requested		
2/13	Referred to State Administration		
2/16	Hearing		
2/16	Committee Executive Action--Bill Passed	17	1

HOUSE BILL NO. 564

INTRODUCED BY A. OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE UNIVERSAL SERVICE TELECOMMUNICATIONS LAWS; REQUIRING THE PUBLIC SERVICE COMMISSION UPON PETITION OR ITS OWN MOTION TO INVESTIGATE THE NEED FOR A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE AUTHORITY TO ESTABLISH A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE AUTHORITY TO ADOPT RULES FOR THE ADMINISTRATION OF THE UNIVERSAL SERVICE FUND; CLARIFYING THE METHODOLOGY FOR CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND; CLARIFYING THE PAYMENT PROCESS FROM THE UNIVERSAL SERVICE FUND; AMENDING SECTIONS 69-3-842, 69-3-843, 69-3-844, AND 69-3-845, MCA; REPEALING SECTION 41, CHAPTER 349, LAWS OF 1997, AND SECTION 6, CHAPTER 187, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-842, MCA, is amended to read:

"69-3-842. ~~(Temporary)~~ Universal service fund established -- purpose. (1) ~~Pursuant to a determination of need, the commission shall establish and administer~~ Upon petition by a telecommunications carrier or the consumer counsel or on the commission's own motion, the commission shall investigate the need for a fund to assist eligible telecommunications carriers in providing affordable telecommunications services in high-cost areas. This investigation must take into account the evolving nature of universal service as well as changes in federal and state telecommunications support systems, including but not limited to universal service funds and access reform.

(2) If the commission determines that a state universal service fund is necessary to promote the policies in 69-3-841 and is consistent with the public interest, the commission shall establish a state universal service fund. The fund must provide support for the following services:

- (a) voice grade access to the public switched network, including some usage;
- (b) dual-tone multifrequency (DTMF or "touch tone") signaling or its equivalent;
- (c) single-party service;

(d) access to emergency services, including access to 9-1-1, where available, and access to enhanced 9-1-1 when requested by a telecommunications carrier's local community and when the telecommunications carrier has technical capacity to provide it;

(e) access to operator services;

(f) access to interexchange services; and

(g) access to directory assistance.

~~-----~~ ~~(2)(3)~~ The fund must support only access to the services listed in subsections ~~(1)(d)~~ (2)(d) through ~~(1)(g)~~ (2)(g) and not support the services themselves.

~~-----~~ ~~(3)(4)~~ The fund must be administered to ensure that its operation is competitively and technologically neutral. ~~(Terminates December 31, 2001--sec. 6, Ch. 187, L. 1999.)"~~

Section 2. Section 69-3-843, MCA, is amended to read:

"69-3-843. ~~(Temporary)~~ Fund administrator -- commission rulemaking authority.

(1) A fiscal agent and daily administrator must be selected by the commission to receive and distribute funds under 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section.

(2) The fiscal agent must be selected by the commission based upon a competitive bidding process after an opportunity for public comment on the specific qualifications required of the fiscal agent. A telecommunications carrier is not eligible to be the fiscal agent. The duties of the fiscal agent must be determined by a contract consistent with 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section. The contract term of the fiscal agent ~~must expire December 31, 2001~~ may not be for a period greater than 3 years.

(3) The commission may adopt rules for the administration of the fund. ~~fiscal agent shall provide monthly reports of fund activities to the commission and shall provide audits annually by a certified public accountant in a manner determined by and under the direction of the commission.~~

~~-----~~ ~~(4) The fund financial accounts of the fiscal agent must be available at reasonable times to any telecommunications carrier in the state and to the public. The commission may investigate the accounts and practices of the fiscal agent and enter~~

~~orders concerning the accounts and practices. (Terminates December 31, 2001--see, 6, Ch. 187, L. 1999.)"~~

Section 3. Section 69-3-844, MCA, is amended to read:

"69-3-844. ~~(Temporary)~~ Contributions to fund. (1) The fiscal agent shall collect contributions from all telecommunications carriers on a monthly basis, based on a July 1 to June 30 fiscal year. Those contributions must be determined on a percentage of total revenue for all telecommunications carriers registered in the state. ~~Initial contributions to the fund may only be collected for the 2-month period prior to the effective date of distributions from the fund and must be calculated as follows:~~

~~----- (a) determine the total retail revenue for all telecommunications carriers for the immediately preceding calendar year;~~

~~----- (b) determine the total funds needed for distributions in the next fiscal year as authorized pursuant to 69-3-845;~~

~~----- (c) compute a uniform percentage of the amount determined in subsection (1)(a) that will produce an amount equal to the fund total calculated in subsection (1)(b);~~

~~----- (d) adjust the percentage multiplier computed in subsection (1)(c) to recover or reimburse any fund shortfalls or excesses in the previous fiscal year, including uncollectibles, new providers seeking support, cost of administration, and auditing; and~~

~~----- (e) send notice of the current uniform percentage and appropriate remittance forms to each telecommunications carrier at least 2 months prior to the effective date of the application of the percentage.~~

(2) The commission shall adopt ~~procedural~~ rules to govern collection of the contributions required by this section, as well as rules allowing the fiscal agent and daily administrator to assess late fees and interest on delinquent payments from telecommunications carriers. The fiscal agent is specifically authorized to enforce the contribution requirements of this section through suit in the district courts of Montana, and the prevailing party in an action is entitled to the recovery of costs and attorney fees incurred in that action.

(3) Any reduction in telecommunications carrier access expenses because of the

removal of implicit subsidies inherent in telecommunications carrier access rates must be passed through to Montana end-user customer retail rates. ~~(Terminates December 31, 2001--see. 6, Ch. 187, L. 1999.)"~~

Section 4. Section 69-3-845, MCA, is amended to read:

"69-3-845. ~~(Temporary) Distributions~~ Payments from fund -- calculation of costs. (1) ~~Subject to the requirements of this section,~~ Payments from the fund must be made from collected contributions by the fiscal agent to qualifying eligible telecommunications carriers, on a ~~monthly~~ quarterly basis, pursuant to rules adopted by the commission.

(2) Only eligible telecommunications carriers that offer the telecommunications services described in ~~69-3-842(1)~~ 69-3-842(2) to all customers in a designated support area and that advertise the availability of the telecommunications services and the charges for the telecommunications services using media of general distribution may receive support from the fund for the designated support area.

~~----- (3) Distributions must be calculated for the designated support areas established by the commission. In the case of an area served by a rural telephone company, the term "designated support area" means the rural telephone company's Montana service area unless the rural telephone company voluntarily adopts a proxy model for the calculation of the rural telephone company's cost of telecommunications services under subsection (6). After adoption of a proxy model, the rural telephone company's designated support area must be an area designated by the commission, which may be smaller than a wire center. The term designated support area for all other telecommunications carriers means a geographic area as established by the commission, which must be smaller than a wire center.~~

~~----- (4) Support for the services listed in 69-3-842(1) must be calculated as the difference between the costs determined in each designated support area and the affordability benchmark in that support area. The commission shall adopt rules to determine affordability benchmarks.~~

~~----- (5) Except as provided in subsection (6), for rural telephone companies and other eligible telecommunications carriers offering services in a designated support~~

~~area served by a rural telephone company, the average cost for each line must be calculated and submitted, based on the preceding calendar year, to the fiscal agent as follows:~~

~~—— (a) If an additional eligible telecommunications carrier has not been designated pursuant to 69-3-840(3), the rural telephone company's total unseparated loop cost, as defined by federal separation rule methodology in effect on December 31, 1996, must be added to the switching costs, local transport costs, and customer operations costs assigned to the telecommunications services set forth in 69-3-842(1), which must be calculated using the methodology set forth in federal communications commission jurisdictional separation rules in effect as of December 31 of each calendar year. This total cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.~~

~~—— (b) Upon the designation of an additional eligible telecommunications carrier pursuant to 69-3-840(3) in a designated support area served by a rural telephone company, the additional eligible telecommunications carrier has access to the fund on the same basis as the rural telephone company. Upon the designation of the additional eligible telecommunications carrier, both the carrier and the rural telephone company must receive distributions from the fund based upon the rural telephone company's average cost for each line disaggregated to geographic areas smaller than a wire center. The support for each line for each geographic area must be based upon the rural telephone company's costs, as determined in subsection (5)(a), distributed to each of the geographic areas on the basis of relative distribution factors established by a cost proxy model adopted by the commission.~~

~~—— (6) Except as provided in subsection (5)(b), for companies that are not rural telephone companies and for rural telephone companies voluntarily electing to use a cost proxy model, the average cost for each line in designated support areas must be calculated based on the cost proxy model adopted by the commission. This total per-line cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.~~

~~———— (7) In determining any proxy mechanism under this section, the commission shall use a model that:~~

~~———— (a) targets support to a geographic area smaller than a wire center;~~

~~———— (b) uses acceptable outside plant design and costing principles;~~

~~———— (c) uses reasonable switch design and costing principles;~~

~~———— (d) includes a reasonable share of the joint and common costs of the telecommunications carrier;~~

~~———— (e) meets standards for documenting model logic and the sources of cost data input; and~~

~~———— (f) meets reasonableness tests to ensure that model outputs are representative of costs that can be reasonably expected in the construction of a network and that the network is capable of providing telecommunications services that meet the telecommunications services quality standards of the commission and federal regulators.~~

~~———— (8) (3) An eligible telecommunications carrier providing telecommunications services through resale of another telecommunications carrier's telecommunications services or facilities may not receive support for those telecommunications services or facilities if the rates charged to an eligible telecommunications carrier by the other telecommunications carrier have been reduced by a contribution from universal service funds under this section.~~

~~———— (9) (4) Costs of administering the fund must be paid from the fund. (Terminates December 31, 2001--sec. 6, Ch. 187, L. 1999.)"~~

NEW SECTION. **Section 5. Repealer.** Section 41, Chapter 349, Laws of 1997, and section 6, Chapter 187, Laws of 1999, are repealed.

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

- END -

FISCAL NOTE

Bill #: HB0564

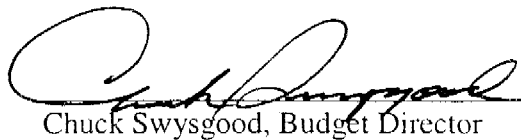
Title: Revise universal service telecommunications laws

Primary Sponsor: Alan Olson

Status: As Introduced

Sponsor signature

Date


Chuck Swysgood, Budget Director

2/19/01
Date

Fiscal Summary

	<u>FY2002 Difference</u>	<u>FY2003 Difference</u>
Expenditures:	0	0
Revenue:	0	0
Net Impact on General Fund Balance:	\$0	\$0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

1. There is no fiscal impact.

HB 564

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on February 16, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB28, HB564, HB574, HB587,
HB589, 2/12/2001
Executive Action: None

50% owned homes, and this would be a way to increase home ownership.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. BITNEY asked Mr. Kadas how this would change the exemptions. He said it would affect the park dedication requirement.

Closing by Sponsor:

REP. FACEY said to build condominiums is a long drawn out review, and with this bill the process jumps over the review.

{Tape : 1; Side : B; Approx. Time Counter : 0}

HEARING ON HB564

Sponsor: REP. ALAN OLSON, HD8, WHEATLAND, MUSSELSHELL, YELLOWSTONE

Proponents: Geoff Feiss, Montana Telecommunications Assn.
Bob Rowe, Public Service Commission
Mike Strand, Montana Extended Telecommunications Sys.
Russ Cravens, Quest Communications
Joan Mandeville, Blackfoot Cooperative
Becky Berger, Touch America

Opponents: Chuck Evilsizer, attorney for Ronan Telephone Co.

Opening Statement by Sponsor:

REP. ALAN OLSON, HD8, WHEATLAND, MUSSELSHELL, YELLOWSTONE, said this law revises the Universal Service Telecommunications Law. It provides the Public Service Commission permission to investigate the need for a universal service fund and the authority to establish this fund.

Proponents' Testimony:

Mr. Feiss presented written testimony. EXHIBIT(buh39a02)

{Tape : 1; Side : B; Approx. Time Counter : 15.6}

Mr. Rowe presented written testimony. **EXHIBIT(buh39a03)**

{Tape : 1; Side : B; Approx. Time Counter : 21}

Mr. Strand said in the 1940's and 1950's rural networks were built using expensive copper line. To make service affordable for every American, the universal service fund evolved. "Now America is the envy of the rest of the rest of the world," he said. "We are able to call doctors, ambulances and police, " he said, "and this creates huge social benefits." He told the committee that the urban states did not like having to collect the tax for states like Montana, but the concept is critical to Montana.

Mr. Cravens said it is important to have this policy stated because if the people in New York don't pay, the people in Montana will have to.

Ms. Mandeville said these basic network infrastructure funds are important for Montana.

{Tape : 2; Side : A; Approx. Time Counter : 0}

Ms. Berger agreed with the other proponents and said it provides the necessary authority to the Public Service Commission to investigate and distribute the fund in a neutral manner.

Opponents' Testimony:

Mr. Evilsizer said this program is very flawed and a very bad public policy. He said he was in strong opposition to the bill. He said there are serious inequities that need to be remedied before any new type of subsidy is considered. "The law should be allowed to sunset," he said. **EXHIBIT(buh39a04)**

Questions from Committee Members and Responses:

REP. BOOKOUT-REINICKE asked **Mr. Evilsizer** how much is in the fund now. **Mr. Evilsizer** said \$45 million. **REP. BOOKOUT-REINICKE** asked how much the fee would be in Montana. **Mr. Evilsizer** said it is not specified in the bill and there is no way to replace the \$45 million. He said the other states are looking to recipients to have a plan in place to do it for themselves. **REP. BOOKOUT-REINICKE** asked if the fee is to be added to the basic local fee. **Mr. Evilsizer** replied it was an additional fee.

REP. JUNEAU asked **Mr. Rowe** if other states have implemented changes and was there a plan in Montana. **Mr. Rowe** said 30 states have a plan under way and there is movement underway. **REP. JUNEAU**

asked if this was the plan for \$1 month service for low income people. **Mr. Rowe** said the program does support the "lifeline."

REP. GALLIK asked **Mr. Rowe** with a new Congress and tax cuts on the agenda, if there was a risk of having a fund in place that would give them an out. **Mr. Rowe** replied, "Over Conrad Burns' dead body."

REP. LAIBLE asked **Mr. Feiss** why Ronan felt they were not getting a fair share. **Mr. Feiss** said they were because high cost support goes to high cost customers. He said Ronan was not a high cost customer as they average 20 customers per line. He said a rural average per line is 1.6 customers. Also, he pointed out that the funds could not be used for any other purpose.

Closing by Sponsor:

REP. OLSON urged the committee to pass the bill saying that, "it works and it has been proven time after time."

HEARING ON HB587

Sponsor: **REP. RICK LAIBLE, HD59, BITTERROOT**

Proponents: **Tim Howard, Homelands Development Company**
Byron Roberts, Montana Building Industry Assn.
Michael Kakua, attorney
Tom Dovere, self
Peggy Trenk, Montana Assn of Realtors
Don Allen, Western Environmental Development Assn.
Perry Ashby, Westmont Builders; Montana Builders Assn.

Opponents: **Jane Jenliski, Montana Assn. of Counties**
Jennifer Madjic, Gallatin County
Bob Horne, Great Falls Planning Department
Harold Blatti, Stillwater County
Bob Hunter, Bozeman Civil Engineering
Hal Fossum, City of Helena
Mike Kadas, City of Missoula
Steve Kirchhoff, citizen
Tim Davis, Montana Smart Growth Coalition
Paul Luwe, City of Bozeman
Clark Johnson, City Manager, Bozeman

House Bill 564, Universal Service Extension and Revisions

Before the House Business and Labor Committee

Comments of Geoff Feiss, General Manager
Montana Telecommunications Association

February 16, 2001

About MTA

- Commercial and cooperative providers of local telecommunications services
- Providers of competitive services, DSL, high-speed Internet, videoconference and distance learning/distance medicine, cable modem, and other advanced services
- Invest \$70 million+ per year in infrastructure
- Employ 800+ Montana citizens

Montana's telecom leaders (among others) include:

- Sen. Conrad Burns, Chairman of the Senate Telecommunications Committee. A staunch advocate of universal service and other provisions designed to help rural telecommunications companies meet the challenges of high costs of doing business coupled with low population/market density.
- Joan Mandeville, Vice President of Blackfoot Telephone Cooperative. Member of the Federally appointed Rural Task Force, which was given the impossible task of developing a consensus among diverse stakeholders on the future of rural universal service policy. And they did it!
- Bob Rowe, Montana public service commissioner. Past- chairman of the National Association of Regulatory Commissioners, and that organization's Telecommunications Committee Chairman. Currently serves on the Federal-State Joint Board on Universal Service.

Why do we have universal service?

- To maintain affordable access to modern telecommunications by all Americans, regardless of where they live.
- Rural telephone companies derive their revenues from three main sources: rates, charges to other telephone companies to connect to local networks ("access" charges), and universal service. Universal service and access charges can comprise as much as 85% of rural companies' revenues.

Universal service is **MADE** for states like Montana

- Most rural companies in the U.S. measure how many customers they have per mile of telephone line. In Montana, we often measure how many miles of line we have per customer
- Montana receives \$45 million+ per year in federal "high cost" universal service support for infrastructure investment in Montana
- **Universal service works!** Every dollar received by Montana's independent companies is invested in the state. Universal service directly benefits high cost states, and consumers in rural Montana. And it shows! Montana's rural telephone customers benefit from state of the art telecommunications services and products, outstanding quality of service and unparalleled commitment to customer care.
- strict financial controls and federal audits ensure that universal service support is spent only on basic service for which it is intended

What universal service does **NOT** do:

- It does not fund competitive commercial ventures. It is limited to a company's defined service territory. Any ventures outside of this area, or any investments in service or technology that isn't strictly defined as a "supported service" are made with independent commercial financing.
- It does not fund advanced services, like DSL. And yet, Montana's independent telephone companies are rolling out DSL to rural communities across the state (e.g., Ennis, Phillipsburg, Arlee, Somers, Roundup, Jordan, Belt, and dozens more)

Why do we need a state universal service fund?

- We don't. Yet. But there is pressure in Washington to reduce federal support to the states. If and when that happens, we should be prepared to respond with a program to meet our most significant needs.
- We should recognize that there is no way a rural state like Montana, with such high costs and so few people can ever make up for significant reductions in federal universal service support. That's why there's a federal program!
 - A small reduction in federal support could mean significant revenue shortfalls in Montana, leading to less investment or higher rates, or both.
- But having the authority to implement a state program, if and when one is determined necessary, gives us an insurance policy with which we can address identifiable needs to augment a federal support mechanism

HB 564: Summary:

HB 564 provides Montanans with the ability to address the potential for a state universal service fund that can complement a federal program. The "new"

federal program is still under construction, but is expected to be ready by the end of this year. At that time, we should have a better idea of what, if anything, we will need in terms of a state universal service program.

HB 564 extends existing authority to establish a state universal service fund if necessary.

This bill also simplifies the process by which the commission can establish a fund, giving the commission more flexibility to determining how such a program best will protect Montana's high cost telecommunications consumers.

Amendments:

MTA is offering a few clarifying amendments that have been worked out with industry participants, particularly Qwest.

1. emphasizes the state may determine the need to establish a state universal service fund based on a petition "for good cause" by the commission, the consumer counsel or a telecommunications carrier.
2. changes to current-law timing of contribution to a state universal service fund from monthly to quarterly, based on a calendar year.
3. Clarifies that contributions are based on "retail" revenues of telecommunications carriers.
4. ensures that any universal service support is used solely for purposes for which universal service is intended.

Conclusion:

MTA respectfully urges the committee to give HB 564 a Do Pass recommendation.

Amendments to House Bill No. 564
1st Reading Copy

For the House Business and Labor Committee

1. Page 1, line 19.

Following: "petition"

Insert: "for good cause"

2. Page 3, line 2.

Strike: "monthly"

Insert: "Quarterly"

3. Page 3, line 2.

Strike: "July 1 to June 30"

Insert: "January 1 to December 31"

4. Page 3, line 3.

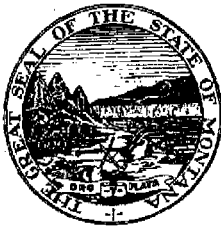
Following: "total"

Insert: "retail"

5. Page 3.

Following: line 23

Insert: "(3) Any funds received by an eligible telecommunications carrier from the state high cost fund must be used for the provision, maintenance and upgrading of facilities and services for which the support is intended."



PUBLIC SERVICE COMMISSION

EXHIBIT 3
DATE FEB. 16, 2001
HB 564

(3)

P O Box 202601
Helena, Montana 59620-
Telephone: (406) 444-
FAX #: (406) 444-7618
E-Mail:

Bob Rowe, Commissioner
District 5

Chairman McKenney and Members of the House Business and Labor Committee,

I am Bob Rowe. I am a member of the Public Service Commission.

The PSC supports House Bill 564. It is an important and flexible tool, helping to ensure that Montanans continue to receive high quality and affordable telecommunications service. For reasons I will describe, Representative Olson's bill is perfectly timed and well crafted.

I am a member of the Federal-State Joint Board on Universal Service.¹ Under the 1996 Federal Telecommunications Act the Joint Board is charged with developing policies and making recommendations to the Federal Communications Commission concerning universal service programs, especially including support to companies serving high cost areas such as rural Montana. I have learned two things as the piles of briefs, reports, analysis and arguments get higher and higher in my office.

Universal service is complicated.

Universal service is controversial.

So what exactly is universal service and why is it important to Montana? Federal universal service is the funding mechanism that keeps monthly local telephone rates affordable. In the simplest terms, telecommunications companies pay into the universal service fund. These monies are then distributed to local telephone companies to help them recover the high costs of providing and maintaining local telephone networks in rural areas. Universal service only funds basic telephone service at this time. It does not pay for advanced services or access to the Internet. However, a high quality local network (which is supported by universal service) is the essential pathway for most people to access the Internet. The FCC has strict requirements and oversight over universal service funds and carriers are strictly accountable for monies received. Universal Service has been an

¹ The Joint Board is made up of four state utility commissioners (currently from Alaska, South Dakota, and Texas in addition to me), three FCC commissioners (currently Commissioners Ness, Tristani, and Furchtgott-Roth), and one consumer representative (currently from Missouri).

essential part of the telecommunications policy since the 1930's. However, the Congressional *mandate* for universal service was only enacted in 1996. Montana local phone bills are over \$45 million lower than they would be without the national high cost fund, and providers are able to supply a higher level of service than would otherwise be the case.

Much like Montana's telecommunications law, the 1996 Federal Telecommunications Act emphasized the twin goals of competition and universal service. Thanks to the bipartisan "Farm Team" of Senate Commerce Committee members, especially including Senator Conrad Burns, the Telecommunications Act includes strong provisions on universal service, declaring that rural and urban rates and service should be "reasonably comparable." In addition to the national fund, the federal Act provides that states "may adopt" additional state-level mechanisms.

Last year, the FCC finalized the program to support high cost lines served by large companies, such as Qwest.²

In December, the Joint Board finalized its recommendation concerning modifications to the national program to support small companies serving rural areas. This program supports service to customers of all Montana phone companies other than Qwest. The FCC is currently reviewing the Joint Board's recommendation. The Joint Board is about to consider what services should be included in the definition of services eligible for universal service support.

While both the national large company and small company programs were "under construction" it would have been difficult to implement an appropriate state-level counterpart. Accordingly, both the telecommunications industry and the Public Service Commission considered it premature to create a fund under the Legislative authority that will sunset this year.

In my experience, an important, recurring issue in the national debate is the appropriate balance of national and state responsibility to support high cost telecommunications service. The rural view is that this should largely be a national responsibility, as the ability to call anywhere in America is of value to all Americans. The opposing view, for which there are many advocates, is that if a state wants to receive national support it should bear some of the burden itself. Representative Olson's bill allows Montana to respond that, yes, in fact we are doing our part.

HB 564 also provides the flexibility for various parties to craft specific proposals, and to have those proposals evaluated and modified in response to new information and changing events. From

² The Montana PSC is participating in a federal appeals court challenge to the FCC's order, contending that the FCC's order is not adequate to ensure "reasonable comparability" of rural and urban rates for customers of Qwest.

my experience at the center of the national universal service storm, HB 564 strikes just the right balance of clear policy direction and flexible implementation. I thank Representative Olson for his work, and I urge the Committee's support.

**TESTIMONY IN OPPOSITION TO HOUSE BILL NO. 564
BEFORE THE HOUSE BUSINESS AND LABOR COMMITTEE
BY RONAN TELEPHONE COMPANY**

February 16, 2001

Presented by Ivan C. Evilsizer, Attorney for Ronan Telephone Co.

Ronan Telephone Company strongly opposes the passage of House Bill No. 564, which would remove the sunset provisions of the current state universal service fund authorization and otherwise amend current law. This law, originally enacted in 1997, was designed to grant legal authority to the Montana Public Service Commission, to create and administer a "State Universal Service Fund" (to subsidize- financially support- the provision of basic telephone service at reasonable rates for all Montana consumers). Such a fund would supplement the existing Federal Universal Service Fund, from which Montana currently receives approximately \$45 million per year.

There are serious inequities in the current telecommunications competitive playing field in Montana that must be studied and remedied before any type of new subsidy mechanism should be considered. This law should be allowed to sunset, until these issues are studied, as proposed in SJ 15, which is now pending before the Senate Energy and Telecommunications Committee, and until after a recommendation is made by the interim Committee to the next Session of the Montana Legislature

The competitive playing field in the Montana telecommunications industry is grossly unlevel and in desperate need of study and correction. This body should not "throw more money" into a flawed and unenforceable system. Most companies in this industry are fully taxed, fully regulated and lightly or completely unsubsidized. They pay effective tax rates of up to 40%. Their rates and service standards are set by the PSC, and their competitive responses are governed by the regulatory process. They also receive little or no subsidies. However, in the new competitive environment, these private for-profit firms are in direct competition with Cooperatives that: 1) are heavily subsidized by the Federal Universal Service Fund (millions of dollars each year), 2) pay much lower tax rates, and are exempt from many taxes (effective rates as low as 5%), 3) are totally exempt from PSC regulation, and therefore can charge any rate, are exempt from service quality regulation, and may respond competitively with complete freedom

and impunity.

The authorization for a potential new state subsidy system should be allowed to die its natural death on December 31, 2001 as current law provides, until after the critical outstanding subsidized competition and playing field issues are studied and resolved, as outlined in SJ 15 (*See*, attached). This law was first enacted in 1997, in the wake of the passage of the 1996 Federal Telecommunications Act, in the hysteria over the dramatic and rapid impacts that Act might have in Montana. Over the ensuing four years, those fears proved to be premature. In fact, not one single Petition or action has ever been submitted by any company or other party, to initiate or request the implementation of a state universal service fund. The alleged "urgent need" for this law in 1997 has never materialized in four years.

The Federal Universal Service Funds currently received by some companies (primarily the Cooperatives) are, in some instances, being expended in competitive ventures outside of the rural areas where those funds are intended to be used. In fact, it is contrary to law to use such funds outside of designated rural areas, or support other than basic telephone services. Nevertheless, these laws have gone unenforced, which results in a distorted competitive scenario, discouraging investment of private capital, and eroding our state tax base. When private for profit companies, such as Ronan Telephone, have attempted to enforce these laws, they are consistently frustrated by the Montana law which currently exempts Cooperatives from any PSC jurisdiction (unlike most other states). This current state of affairs in the blatant misuse of the Federal subsidy funds is the most vivid and telling argument against HB 564. Further, the current misuse threatens the continued receipt of \$45 million per year in Federal money, which is supporting rural Montana telephone rates in the range of \$40 to \$100 per month per telephone line. No Montana company, new start-up company, or out-of-state company considering investing in Montana, will have any incentive to invest in the current system of unregulated subsidized competition, which is clearly economically inefficient and contrary to the public interest.

This Bill is unnecessary, unwise and unenforceable. It would only throw consumer's dollars into an already flawed system. This Bill should only be considered after the existing problems are fixed, and the new funds can be assured to flow to the actual identified needs.

Ronan Telephone strongly urges your rejection of this Bill.

2001 Montana Legislature

About Bill -- Links

SENATE JOINT RESOLUTION NO. 15

INTRODUCED BY E. STONINGTON

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT SUFFICIENT STAFF RESOURCES TO STUDY THE COMPETITIVENESS OF THE EXISTING TELECOMMUNICATIONS MARKET IN MONTANA WITH SPECIFIC ATTENTION TO THE DIFFERENCES THAT EXIST BETWEEN PRIVATE, FOR-PROFIT TELECOMMUNICATIONS COMPANIES AND TELEPHONE COOPERATIVES IN THE AREAS OF REGULATION, TAX TREATMENT, AND RECEIPT AND USE OF FEDERAL UNIVERSAL SERVICE FUNDS; AND REQUIRING A REPORT TO THE 58TH LEGISLATURE.

WHEREAS, the federal Telecommunications Act of 1996 and Senate Bill No. 89, Chapter 349, Laws of 1997, laid the foundation for increased competition in the Montana telecommunications industry; and

WHEREAS, advanced telecommunications services have become a vital component of the ability of the business community and private citizens to bridge distances to regional and global markets; and

WHEREAS, the rapid development of more effective and efficient methods of providing telecommunications outpaces the current regulatory process and review of telecommunications services; and

WHEREAS, private, for-profit telecommunications companies doing business in Montana and companies contemplating entering the telecommunications market in Montana are regulated by the Public Service Commission, pay higher property tax rates if centrally assessed, pay income and excise taxes, and generally do not receive as much support from the federal universal service fund as telephone cooperatives; and

WHEREAS, it is fundamental to the public policy of this state to ensure the protection of universal service for rural telephone customers and to establish and ensure that the competitive environment in the state's telecommunications industry is level, fair, and equitable and does not provide a competitive advantage to any one type of business entity over any other; and

WHEREAS, the public policy of this state should ensure the fair and equitable assessment of taxes on telecommunications property and an overall telecommunications tax structure that does not result in an advantage or disadvantage to any telecommunications company in a competitive environment and protects the tax base of the state from abuse and erosion; and

WHEREAS, a level, competitive playing field in Montana will promote private investment in telecommunications infrastructure of the state, encourage continued infusion of capital into the state's telecommunications marketplace, and encourage new entrepreneurial activities in the state's telecommunications industry, including the development of efficient, unsubsidized private sector competition and investments in new and advanced services.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the existing competitive marketplace in the Montana telecommunications industry, including but not limited to:

- (1) the rationale for the differences in property tax rates applied to telephone cooperatives and centrally assessed telecommunications companies;
- (2) compliance with and the collection of the telecommunications excise tax;
- (3) the presence and extent of existing and potential subsidized competition in the provision of telecommunications services;
- (4) the regulatory framework currently governing the telecommunications industry and whether changes in scope or purpose are necessary to ensure adequate consumer protection and choice and the economic viability of existing and future telecommunications services providers;
- (5) policies or statutes that create barriers to entry into the Montana telecommunications marketplace;
- (6) the long-term impacts or effects that a competitive marketplace in the telecommunications arena may have on the state tax base;
- (7) the effectiveness and appropriateness of state-sponsored financial incentives to spur telecommunications infrastructure development, including a review of:
 - (a) whether the advanced telecommunications infrastructure development tax credit should be retained, expanded, or eliminated; and
 - (b) the viability of additional grant or loan programs;
- (8) conditions where public-private partnerships may improve public access to advanced telecommunications infrastructure in unserved or underserved areas;
- (9) strategies and initiatives to aggregate demand for advanced telecommunications services in high-cost areas;
- (10) the role of telecommunications services providers in expanding economic development efforts

and the state's position in the global marketplace; and

(11) disincentives for private investments in advanced telecommunications infrastructure and services.

BE IT FURTHER RESOLVED, that interested citizens and individuals and groups with specialized expertise in telecommunications be encouraged to participate in the study.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 58th Legislature.

- END -

Latest Version of SJ 15 (SJ0015.01)

Processed for the Web on February 12, 2001 (5:46PM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted. See the [status of this bill](#) for the bill's primary sponsor.

[Status of this Bill](#) | [2001 Legislature](#) | [Leg. Branch Home](#)

[This bill in WP 5.1](#) | [All versions of all bills in WP 5.1](#)

[Authorized print version w/line numbers \(PDF format\)](#)

Prepared by Montana Legislative Services

(406)444-3064



**HOUSE OF REPRESENTATIVES
ROLL CALL**

HOUSE BUSINESS AND LABOR COMMITTEE

DATE Feb. 16th, 2001

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown			✓
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	.		✓
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney	✓		
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik			✓
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE Feb. 16, 2001

BILL NO. HB 564

SPONSOR(S) Rep. Olson

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
☒ O I	Bob Rowe	1701 Prospect Ave. Helena, MT	PSC
☒ O I	Joan Mandeville	1891 N. Russell St. Missoula, MT	Blackfoot Telephone
P O I	Becky Berger	1315 N Main Helena MT 59601	Touch America
P ☒ I	Chuck Evisizer	2033 11th Ave. Helena, MT	Ronan Telephone Co
☒ O I	Russ Cravens	Helena	Quest
☒ O I	Mike Strand	Helena	MT Independent Telecom Systems
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on February 17, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)

Members Excused: Rep. Roy Brown (R)
Rep. James Whitaker (R)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: 2/14/01
Executive Action: HB406, HB448, HB479, HB497,
HB539, HB589, HB564, HB574, HJR28

REP. LAIBLE said this was money well-spent which would give a good return.

Motion/Vote: REP. PRICE moved that HB406 DO PASS AS AMENDED.
Motion carried 18-1 with McKenney voting no.

EXECUTIVE ACTION ON HB574

Motion: REP. GALVIN-HALCRO moved that HB574 DO PASS.

Discussion:

Motion: REP. GALVIN-HALCRO moved that HB574 BE AMENDED.

Discussion:

Mr. Higgins noted this provided an exception that a deed for contract did not have to be recorded if it was requested not to be recorded.

REP. HIMMELBERGER stated that this amendment covered the concerns of the Montana Banking Association and the Montana Title and Abstract Company.

Vote: Motion carried unanimously.

Motion/Vote: REP. GALVIN-HALCRO moved that HB574 DO PASS AS AMENDED. Motion carried 15-4 with Bitney, Lawson, McKenney, and Steinbeisser voting no.

{Tape : 2; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON HB564

Motion: REP. LAWSON moved that HB564 DO PASS.

Discussion:

Motion: REP. LAIBLE moved that HB564 BE AMENDED.

Discussion:

REP. LAIBLE said this was a clean-up amendment which changes time periods from quarterly to monthly, and calendar year to fiscal year.

Vote: Motion **carried 18-1 with Galvin-Halcro voting no.**

Motion: **REP. LAIBLE** moved that **HB564 DO PASS AS AMENDED.**

Discussion:

REP. GALLIK said he was reading about federal tax cuts every day and he knew that money would be coming out of somewhere. He said if the state is set up to take over this national program, then it might have to.

REP. LAIBLE said that had no bearing on this bill, and if the funding stopped, it would and that was not a matter for the state legislature. He stated this bill would make Montana ready if that happens. He asked why wait until the next legislature, and why not be proactive.

REP. GALVIN-HALCRO said, "While I was campaigning the added fees on Quest and Montana Power were a major issue with the voters." She stated if the legislature allowed this bill it would lead to another fee. She said the proponents said it needed to be adopted just in case, but she felt "the just in case was not here yet."

Vote: Motion **carried 11-8 with Bookout-Reinicke, Fritz, Gallik, Galvin-Halcro, Juneau, Keane, Musgrove, and Tramelli voting no.**

{Tape : 2; Side : A; Approx. Time Counter : 10}

EXECUTIVE ACTION ON HB479

Motion: **REP. LAWSON** moved that **HB479 DO PASS.**

Discussion:

Motion: **REP. PRICE** moved that **HB479 BE AMENDED.**

Discussion:

Mr. Higgins said this amendment addresses the concerns of the bondhouses. He said it allows variable rates to be sold and private bondhouses to continue.

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE FEB. 17, 2001

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown			✓
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker			✓
Rep. Rod Bitney	✓		
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		

House of Representatives

Roll Call Vote

BUSINESS & LABOR COMMITTEE

DATE 2-17-01 Bill NO. HB 564 NUMBER 118MOTION: Rep LAIBLE Do Pass Amended

Name	AYE	NO
Rod Bitney, V.C., Majority (R)	✓	
Gary Matthews, V.C. , Minority (D)	✓	
Roy Brown (R)	✓	
Dave Gallik (D)		✓
Kathleen Galvin-Halcro (D)		✓
Dennis Himmelberger (R)	✓	
Carol Juneau (D)		✓
Jim Keane (D)		✓
Rick Laible (R)	✓	
Bob Lawson (R)	✓	
Nancy Rice-Fritz (D)		✓
John Musgrove (D)		✓
Bill Price (R)	✓	
Sylvia Bookout-Reinicke (R)		✓
Allen Rome (R)	✓	
Don Steinbeisser (R)	✓	
Brett Tramelli (D)	✗	✓
Jim Whitaker (R)	✓	
Joe McKenney (R) Chairman	✓	
Count	11	8



HOUSE STANDING COMMITTEE REPORT

February 17, 2001

Page 1 of 2

Mr. Speaker:

We, your committee on **Business and Labor** report that **House Bill 564** (first reading copy - white) do pass as amended.

Signed:

Joe McKenney
Representative Joe McKenney, Chair

And, that such amendments read:

1. Title, line 8.

Following: "FUND;"

Insert: "PROVIDING FOR THE COLLECTION OF CONTRIBUTIONS TO THE
UNIVERSAL SERVICE FUND ON A QUARTERLY RATHER THAN A MONTHLY
BASIS;"

2. Page 1, line 19.

Following: "petition"

Insert: "for good cause"

3. Page 3, line 2.

Strike: "monthly"

Insert: "quarterly"

Strike: "July 1 to June 30 fiscal"

Insert: "January 1 to December 31 calendar"

4. Page 3, line 3.

Following: "total"

Insert: "retail"

5. Page 3.

Following: line 23

Insert: "(3) Any funds received by an eligible
telecommunications carrier from the state high-cost fund
must be used for the provision, maintenance, and upgrading
of facilities and services for which the support is
intended."

Committee Vote:

Yes 11, No 8.

401410SC.hdc

Renumber: subsequent subsection

- END -

HOUSE JOURNAL
FORTY-THIRD LEGISLATIVE DAY - FEBRUARY 21, 2001

Hurdle, Jacobson, Juneau, Kaufmann, Keane, Laszloffy, Lawson, Lee, Lehman, Lenhart, Lewis, Lindeen, Mangan, Matthews, McCann, A. Peterson, K. Peterson, Price, Raser, Schmidt, Schrumpf, Smith, Steinbeisser, Tramelli, Tropila, Waddill, Wanzenried, Whitaker, Wolery, Younkin.

Total 54

Noes: Adams, Bales, Balyeat, Barrett, Bitney, Bookout-Reinicke, R. Brown, Brueggeman, E. Clark, Cyr, Davies, Devlin, Esp, Fisher, Gallus, Haines, Hedges, Holden, Jackson, Jayne, Jent, Kasten, Laible, Laslovich, Masolo, McKenney, Mood, Musgrove, Newman, Noennig, Olson, Pattison, Rice, Ripley, Rome, Shockley, Sliter, Somerville, Story, Thomas, Vick, Waitschies, Walters, Witt, Mr. Speaker.

Total 45

Voted Absentee: Juneau, Aye.

Excused: None.

Total 0

Absent or not voting: Dale.

Total 1

HB 564 - Representative Olson moved **HB 564** do pass. Motion carried as follows:

Ayes: Adams, Andersen, Bales, Barrett, Bitney, D. Brown, R. Brown, Clancy, E. Clark, Curtiss, Dale, Davies, Esp, Fisher, Fuchs, Haines, Harris, Hedges, Himmelberger, Holden, Jent, Kasten, Laible, Laszloffy, Lawson, Lehman, Lewis, Matthews, McKenney, Mood, Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Ripley, Rome, Schrumpf, Shockley, Sliter, Somerville, Steinbeisser, Thomas, Waddill, Waitschies, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 51

Noes: Balyeat, Bixby, Bookout-Reinicke, Branae, Brueggeman, Buzzas, Callahan, Carney, P. Clark, Cyr, Dell, Devlin, Eggers, Erickson, Facey, Forrester, Fritz, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Gutsche, Hurdle, Jackson, Jacobson, Jayne, Juneau, Kaufmann, Keane, Laslovich, Lee, Lenhart, Lindeen, Mangan, Masolo, McCann, Musgrove, Newman, Raser, Rice, Schmidt, Smith, Story, Tramelli, Tropila, Vick, Walters, Wanzenried.

Total 49

Voted Absentee: Juneau, No.

Excused: None.

Total 0

Absent or not voting: None.

Total 0

HB 570 - Representative Shockley moved **HB 570** do pass. Motion carried as follows:

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, Clancy, E. Clark, P. Clark, Curtiss, Cyr, Dale, Davies, Dell, Devlin, Eggers, Erickson, Esp, Facey, Forrester, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Gutsche, Haines, Harris, Hedges, Himmelberger, Holden, Hurdle, Jackson, Jacobson, Jayne, Jent, Juneau, Kasten, Kaufmann, Keane, Laible, Laslovich, Laszloffy, Lawson, Lee, Lehman, Lenhart, Lewis, Lindeen, Mangan, Masolo, Matthews,

HOUSE JOURNAL
FORTY-FOURTH LEGISLATIVE DAY - FEBRUARY 22, 2001

Total 32

Excused: None.

Total 0

Absent or not voting: None.

Total 0

HB 564 passed as follows:

Ayes: Adams, Andersen, Bales, Barrett, Bitney, Bixby, D. Brown, R. Brown, Carney, Clancy, E. Clark, Curtiss, Dale, Devlin, Esp, Fisher, Haines, Harris, Hedges, Himmelberger, Holden, Jent, Kasten, Laible, Lawson, Lehman, Lenhart, Lewis, Lindeen, Matthews, McCann, McKenney, Mood, Musgrove, Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Ripley, Rome, Schrumpf, Shockley, Smith, Somerville, Steinbeisser, Story, Thomas, Waddill, Waitschies, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 56

Noes: Balyeat, Bookout-Reinicke, Branae, Brueggeman, Buzzas, Callahan, P. Clark, Cyr, Davies, Dell, Eggers, Erickson, Facey, Forrester, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Gutsche, Hurdle, Jackson, Jacobson, Jayne, Juneau, Kaufmann, Keane, Laslovich, Laszloffy, Lee, Mangan, Masolo, Newman, Raser, Rice, Schmidt, Sliter, Tramelli, Tropila, Vick, Walters, Wanzenried.

Total 44

Excused: None.

Total 0

Absent or not voting: None.

Total 0

HB 570 passed as follows:

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, Clancy, E. Clark, P. Clark, Curtiss, Cyr, Dale, Davies, Dell, Devlin, Eggers, Erickson, Esp, Facey, Fisher, Forrester, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Gutsche, Haines, Harris, Hedges, Himmelberger, Holden, Hurdle, Jackson, Jacobson, Jayne, Jent, Juneau, Kasten, Kaufmann, Keane, Laible, Laslovich, Laszloffy, Lawson, Lee, Lehman, Lenhart, Lewis, Lindeen, Mangan, Masolo, Matthews, McCann, McKenney, Mood, Musgrove, Newman, Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Raser, Rice, Ripley, Rome, Schmidt, Schrumpf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Thomas, Tramelli, Tropila, Vick, Waddill, Waitschies, Walters, Wanzenried, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 99

Noes: Story.

Total 1

Excused: None.

Total 0

Absent or not voting: None.

Total 0

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **VICE CHAIRMAN ROYAL JOHNSON**, on March 20, 2001
at 4:30 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Tom Zook (R)

Members Excused: Sen. Mack Cole, Chairman (R)
Sen. Alvin Ellis Jr. (R)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 564, 3/14/2001
Executive Action:

HEARING ON HB 564

Sponsor: REPRESENTATIVE ALAN OLSON, HD 8, Roundup

Proponents: Bob Rowe, Public Service Commission
Mark Baker, AT&T
Geoff Feiss, Montana Telecommunications Assn.
Mike Strand, Montana Independent Telecommunications
Systems

Russ Cravens, Qwest
John Fitzpatrick, Touch America

Opponents: **Jay Preston, Ronan Telephone**
Chuck Evilsizer, Hot Springs Telephone

Opening Statement by Sponsor:

REPRESENTATIVE ALAN OLSON, HD 8, Roundup, submitted written testimony, **EXHIBIT(ens63a01).**

Proponents' Testimony:

Bob Rowe, Public Service Commission, submitted written testimony, **EXHIBIT(ens63a02).**

Mark Baker, AT&T, submitted a proposed amendment, **EXHIBIT(ens63a03).** The need for the amendment arose from an equity and fairness position. The federal Universal Service fund is solely funded through interstate revenue and is an assessment based upon that. The amendment addresses the need for contributions from interstate revenue, should the federal fund disappear.

Geoff Feiss, Montana Telecommunications Assn., noted that the concept of the Universal Service is that all Americans should have access to affordable telecommunications services, regardless of where they live. To make that possible, there is a nationwide contribution pool from which high cost telephone companies are supported. Last year, there was a recommendation from the Rural Task Force, which was an FCC commissioned group of various telecommunications interests, on the advancement of Universal Service. Customers of rural carriers tend to have a relatively small local calling scope and make proportionally more toll calls. Rural carriers frequently have substantially fewer lines per switch. Universal Service is a national mechanism by which support for rural companies can be obtained so investment can be maintained in rural infrastructure. This bill simply seeks the authority to establish a program, if and when needed, that would compliment, but not replace, the federal program.

Mike Strand, Montana Independent Telecommunications Systems, submitted written testimony, **EXHIBIT(ens63a04).**

Russ Cravens, Qwest, voiced support of the bill and amendments.

John Fitzpatrick, Touch America, supported the legislation and amendments.

Opponents' Testimony:

Jay Preston, Ronan Telephone, submitted written testimony, EXHIBIT(ens63a05).

Chuck Evilsizer, Hot Springs Telephone, submitted written testimony, EXHIBIT(ens63a06).

Questions from Committee Members and Responses:

SENATOR TOM ZOOK wondered if the sponsor agreed that there was no enforcement mechanism. **REPRESENTATIVE OLSON** disagreed. The Public Service Commission (PSC), through their rule making authority, would set up the terms and conditions of the program.

SENATOR ZOOK asked who the fiscal agent would be. **Bob Rowe** indicated that the bill provides that a fiscal agent be selected through a competitive bidding process and a carrier may not be the fiscal agent. **SENATOR ZOOK** noticed that the fiscal agent's responsibility was to see that money was collected and questioned whether it was also their responsibility to dispense it. **Mr. Rowe** said yes. The PSC adopted rules governing the program and oversees that the fiscal agent follows those rules.

SENATOR ROYAL JOHNSON stated that the legislation was a renewal with no ending date. He desired to know what has happened in the area as far as rules and collections being made and appointments of fiscal agents in the past two years. **Mr. Rowe** replied that Universal Service should be a federal issue. During the past few years, a number of states have adopted state-level programs.

SENATOR JOHNSON inquired as to how the federal group who disperses funds figures out who gets what and how much. **Mr. Rowe** responded that the process starts with congressional authorization. The joint board then conducts proceedings and adopts policies. The FCC adopts rules and then there are two organizations that are essentially administering parts of the program. There is the Universal Services Administrative Company and the National Exchange Carrier Association, both of which have very detailed rules and reporting requirements. Charges are assessed on all carriers and are then distributed according to formulas that are monitored and audited. The formula is one of the most controversial things in telecommunications policy. There are a number of different models and ultimately, the joint board makes recommendations that the FCC adopts. Those models are then made into rules and practices that the administrators carry out.

SENATOR JOHNSON sought to know whether the \$45 million that came into Montana was in one large portion and how it was dispersed.

Mr. Rowe explained that the disbursements are made directly to the individual companies. There are reports on those disbursements on a quarterly basis. All of the carriers in Montana, excluding Ronan, receive some amount of high cost fund support. Ronan's costs, according to the formula, are relatively lower so they don't receive the high cost fund support. Qwest, as a large carrier, participates in a separate fund. **SENATOR JOHNSON** asked if Qwest would receive a substantial amount of money in addition to or part of the \$45 million. **Mr. Rowe** exhorted that Qwest receives roughly \$2 million. The smaller companies receive roughly \$45 million. All rural carriers participate in the program currently being finalized. **SENATOR JOHNSON** desired to know what the cost would be to ratepayers. **Mr. Rowe** exclaimed that if the state fund were instituted, the PSC would have to look at the cost. It would be impossible to say what the program might cost unless the exact program was known. This legislation identifies the services that may be funded. It is in contrast to the federal legislation which says that the definition of Universal Service is to evolve over time and that the joint board is to examine it.

SENATOR MIKE TAYLOR wanted an explanation of why Ronan and Hot Springs Telephone didn't participate in the program. **Mr. Rowe** noted that Hot Springs does receive high cost fund support, but Ronan does not. The Ronan service territory concentrates more closely around the town of Ronan, whereas the Hot Springs territory has more rugged conditions.

SENATOR ZOOK mentioned previous testimony saying that current funds were being abused. **Jay Preston** elaborated that there wasn't definite proof, although they were convinced that they were competing against the fund. They have tried for two years to get the issue addressed, both at the state commission level and in the courts, but nobody was willing to investigate the possibility of the abuse occurring. **SENATOR ZOOK** thought it was wrong to throw out a charge without any proof.

Closing by Sponsor:

REPRESENTATIVE OLSON purported that cooperatives are regulated by their membership every year at annual meetings. This fund has benefitted Montana greatly and addresses things such as one telephone hookup per mile of line.

SENATE COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

March 20, 2001

PAGE 5 of 5

ADJOURNMENT

Adjournment: 5:15 P.M.

SEN. MACK COLE, Chairman

MISTI PILSTER, Secretary

MC/MP

EXHIBIT (ens63aad)

House Bill 564, Universal Service Revisions and Extension

**Opening Comments of Rep. Alan Olson
Before the Senate Energy and Telecommunications Committee
March 20, 2001**

Universal service has been a core telecommunications policy for 70 years. The policy simply means that every American—no matter where he or she lives—should have access to reasonably comparable basic telecommunications services at reasonably comparable prices.

The policy is largely responsible for the build-out of our nation's telecommunications network, where today nearly 95% of all Americans have access to affordable, modern telephone service.

In 1996, Congress codified the policy of preserving and advancing universal service. The federal law also said states "may" implement a state universal service program.

One year later, the Montana Legislature authorized a state universal service fund to complement the federal program. The state program was reauthorized again in 1999.

Two years have passed again. While the federal program has been modified for large telephone companies, it is being reviewed by the FCC for small rural telephone companies.

And that's why I bring House Bill 564 before you today.

We need to extend the authority to implement a state universal service plan to complement—not replace or substitute—the federal universal service program.

While the preservation and advancement of universal service is a federal responsibility under the Telecommunications Act of 1996,

federal policy makers, who are developing a more permanent universal service mechanism, expect states to demonstrate some willingness to implement a separate program at the state level, if one is needed.

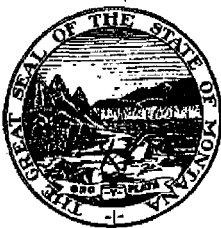
And that's what HB 564 does. It extends the authority of the Montana Public Service Commission to implement a state universal service program, *IF* there is a determination that one is needed.

It's like an insurance policy that demonstrates Montana's commitment to support its role in the national universal service scheme.

Additionally, HB 564 eliminates language that was enacted in 1997, but which in retrospect serves only to limit our flexibility in developing a response to the federal program that best suits the needs of Montana.

Finally, an amendment will be offered today, and supported by the bill's proponents, which clarifies that a state universal service program should be supported by retail revenues generated within the state, just as the federal program is supported by interstate revenues.

Mr. Chairman, and members of the Committee, I urge your "do concur" vote for HB 564, and reserve the right to close.



PUBLIC SERVICE COMMISSION

Senate Energy & Telecomm.Comm.

Exhibit No. 2

Date 3/20/01

Bill No. HB 564

P O Box 202601

Helena, Montana 59620-

Telephone: (406) 444-

FAX #: (406) 444-7618

E-Mail:

Bob Rowe, Commissioner
District 5

Chairman Cole and Members of the Senate Energy and Telecommunications Committee,

I am Bob Rowe. I am a member of the Public Service Commission.

The PSC supports House Bill 564. It is an important and flexible tool, helping to ensure that Montanans continue to receive high quality and affordable telecommunications service. For reasons I will describe, Representative Olson's bill is perfectly timed and well crafted.

I am a member of the Federal-State Joint Board on Universal Service.¹ Under the 1996 Federal Telecommunications Act the Joint Board is charged with developing policies and making recommendations to the Federal Communications Commission concerning universal service programs, especially including support to companies serving high cost areas such as rural Montana. I have learned two things as the piles of briefs, reports, analysis and arguments get higher and higher in my office.

Universal service is complicated.

Universal service is controversial.

What exactly is universal service and why is it important to Montana? Federal universal service is the funding mechanism that keeps monthly local telephone rates affordable. In the simplest terms, telecommunications companies pay into the universal service fund. These monies are then distributed to local telephone companies to help them recover the high costs of providing and maintaining local telephone networks in rural areas. Universal service only funds basic telephone service at this time. It does not pay for advanced services or access to the Internet. However, a high quality local network (which is supported by universal service) is the essential pathway for most people to access the Internet. The FCC has strict requirements and oversight over universal service funds and carriers are strictly accountable for monies received. Universal Service has been an

¹ The Joint Board is made up of four state utility commissioners (currently from Alaska, South Dakota, and Texas in addition to me), three FCC commissioners (currently Commissioners Ness, Tristani, and Furchtgott-Roth), and one consumer representative (currently from Missouri).

essential part of the telecommunications policy since the 1930's. However, the Congressional *mandate* for universal service was only enacted in 1996. Montana local phone bills are over \$45 million lower than they would be without the national high cost fund, and providers are able to supply a higher level of service than would otherwise be the case.

Much like Montana's telecommunications law, the 1996 Federal Telecommunications Act emphasized the twin goals of competition and universal service. Thanks to the bipartisan "Farm Team" of Senate Commerce Committee members, especially including Senator Conrad Burns, the Telecommunications Act includes strong provisions on universal service, declaring that rural and urban rates and service should be "reasonably comparable." Both Senators Burns and Baucus are strong supporters of the federal universal service program, and have been vigilant to ensure that Montana's interests are protected in Congress. In addition to the national fund, the federal Act provides that states "may adopt" additional state-level mechanisms.

Last year, the FCC finalized the program to support high cost lines served by large companies, such as Qwest.²

In December, the Joint Board finalized its recommendation concerning modifications to the national program to support small companies serving rural areas. This program supports service to customers of all Montana phone companies other than Qwest. The FCC is currently reviewing the Joint Board's recommendation. The Joint Board is about to consider what services should be included in the definition of services eligible for universal service support.

While both the national large company and small company programs were "under construction" it would have been difficult to implement an appropriate state-level counterpart. Accordingly, both the telecommunications industry and the Public Service Commission considered it premature to create a fund under the Legislative authority that will sunset this year.

In my experience, an important, recurring issue in the national debate is the appropriate balance of national and state responsibility to support high cost telecommunications service. The rural view is that this should largely be a national responsibility, as the ability to call anywhere in America is of value to all Americans. The opposing view, for which there are many advocates, is that if a state wants to receive national support it should bear some of the burden itself. House Bill 564 bill allows Montana to respond that, yes, in fact we are doing our part.

² The Montana PSC is participating in a federal appeals court challenge to the FCC's order, contending that the FCC's order is not adequate to ensure "reasonable comparability" of rural and urban rates for customers of Qwest.

HB 564 also provides the flexibility for various parties to craft specific proposals, and to have those proposals evaluated and modified in response to new information and changing events. From my experience at the center of the national universal service storm, HB 564 strikes just the right balance of clear policy direction and flexible implementation. I urge the Committee's support.

Proposed Amendments to House Bill 564

Before the Senate Energy and Telecommunications Committee

Section 1, Page 2, line 12:

Add a new subsection:

(5) for the purposes of this section the term "interexchange services" shall mean telecommunications long-distance services.

Section 3, Page 3, line 4:

Following "total" and before "retail revenue" insert the word "intrastate"

Section 3, Page 3, Line 5:

Insert a new sentence at the end of (1):

"In the event the high-cost support mechanisms of the federal universal service program are eliminated contributions shall be determined on a percentage of total intrastate and interstate retail revenues for all telecommunications carriers registered in the state."

In Support of HB 564

Testimony of Mike Strand, Executive VP Montana Independent Telecommunications Systems (MITS)

MITS represents rural telephone cooperatives and independent rural telephone companies operating across Montana.

It is difficult to overestimate the importance of the concept of universal service to our society as a whole and to Montana in particular. In the decades after the telephone was invented in the 1880s, telephone networks were not built in places like Montana. Instead of coming to Montana, companies built their networks in places like New York and Los Angeles. Those big cities had 5 or 6 competing telephone companies at a time when we had none.

Regulators responded to this situation by limiting the big cities to a single telephone service provider (granting them a monopoly) and telling the other companies that if they wanted to operate they had to go elsewhere. Well, this worked pretty well for places like Billings and Great Falls, because companies ~~were~~ willing serve places that small. It didn't help places like Chester, or Flaxville, or Opheim, because private companies still saw no opportunity at all in these tiny communities.

In these areas, groups of farmers and ranchers gathered themselves together, borrowed money primarily from the federal government and built their own telephone companies.

But that only solved part of the problem. These very rural areas were still extremely expensive to serve even after the systems were built. Just to give you a point of comparison, Qwest has a telephone network that serves the city of Billings. It can spread the costs of providing that service across the roughly 70,000 lines in Billings. Nemont Telephone Cooperative has a service area of 14,000 square miles and has less than 1/3 as many customers than there are in Billings alone over which it can spread its costs of maintaining that far-flung network.

What this means is that if the very rural customers paid the actual difference in cost between Billings and a remote farm house, their rates just for local service would be three or four times what a Billings customer pays.

Over the past few decades these problems have been addressed in part through an evolving system of support mechanisms known as the universal service fund. It provides financial assistance through a very precise and thoroughly audited accounting process to companies in very high cost areas so that basic local telephone service is affordable ~~and~~ comparable to rates in urban areas. *at rates*

The idea has been to make affordable basic phone service available to as many Americans in as many areas of the country as possible, regardless of whether an area is urban or rural in nature.

The program has been wildly successful. Our phone system has long been and continues to be the envy of the world because virtually everybody can afford to be connected to it. The social and economic benefits of this are staggering to people in most other parts of the world. They can't imagine just being able to pick up a phone in their own house and get an ambulance or a doctor or a police officer, let alone being able to order a critical part for their tractor engaging in all manner of commerce.

The way that this program has been funded is by adding a few pennies on everybody's phone bill across the country. The pool of dollars created by all of these pennies then flow out to very rural states like Montana and its neighbors to keep local rates in check.

Schools + lib.

The problem this bill is intended to address is that the more urban states have begun to begrudge this flow of money, and the process of deregulation has provided them an opportunity to do something about it. Their argument (and this argument is getting a very sympathetic ear in Washington) is: why should we continue to help places like Montana when they won't lift a finger to help themselves by instituting a state universal service fund?

Considering that many other states, including Wyoming and Colorado have implemented state universal service funds, this argument is not entirely without merit, although we think it is overly simplistic and selfish. Unfortunately, the urban states have the greater political clout in Washington.

So let me summarize by making 4 points:

1. Universal service funding is critical to keeping rates for basic telephone service affordable for all Montanans.
2. ^{Full} Funding from the federal level is threatened by our failure in Montana to demonstrate that we are willing to take partial responsibility for our own affordability challenges.
3. The funding authority that we are seeking in this bill may not be implemented, just as it has not been implemented for the past four years.
4. If the authority is implemented it will take many months and perhaps longer than a year for the rulemaking to proceed through the Public Service Commission and all parties (the PSC, the various industry segments, the consumer council, other consumer groups, and the public at large) will be given ample opportunity to make their views heard before any such fund would be created.

We urge a "do pass" recommendation on this bill.

5-0 support of MT PSC Commissioners

**TESTIMONY IN OPPOSITION TO HOUSE BILL NO. 564
BEFORE THE SENATE ENERGY AND TELECOMMUNICATIONS COMMITTEE
BY RONAN TELEPHONE COMPANY**

March 20, 2001

Presented by Jay Wilson Preston, President of Ronan Telephone Co.

Ronan Telephone Company strongly opposes the passage of House Bill No. 564, which would remove the sunset provisions of the current state universal service fund authorization and otherwise amend current law. This law was originally enacted in 1997 in an atmosphere of confusion, if not hysteria, in the early days following the passage of the Federal Telecom Act of 1996. It granted legal authority to the Montana Public Service Commission, to create and administer a "State Universal Service Fund" (to subsidize basic telephone service. The fund was envisioned to supplement the existing Federal Universal Service Fund. Many feared this fund would have to replace the federal subsidy. Montana currently receives approximately \$45 million per year from the federal fund. I stood before committees of both Houses then and opposed this bill on the basis that it was premature. Four years have past, and history has proven that it was premature, for no fund has yet even been asked for by the likely beneficiaries. I stand before you today, still in opposition, and for the same reason, it was premature in 1997, and it remains premature now! And furthermore, it is simply bad policy, and should be rejected like any bad proposal

Why is this such bad policy? First, this bill has been assigned to the wrong committee. It really belongs in Taxation, for that is what this is. However, it is a very unusual tax. First, it is universally acknowledged to be unneeded at present. Second, the amount of the tax is unknown. Third, the legislature is, with this bill, conveying it's taxing and spending authority to the Public Service Commission. And most importantly, Fourth, the Commission is denied jurisdiction over the likely recipients of the tax, making proper oversight impossible.

There are serious inequities in the current telecommunications competitive playing

field in Montana that must be studied and remedied before any type of new subsidy mechanism should be considered. This law should be allowed to sunset, until these issues are studied, as proposed in SJ 15, which was tabled by this Committee last Thursday.

The competitive playing field in the Montana telecommunications industry is grossly unlevel and in desperate need correction. This body should not "throw more money" into a flawed and unenforceable system. Over 70% of this industry is fully taxed, fully regulated and lightly subsidized. They pay effective tax rates often in excess of 40% of net income. Their rates and service standards are set by the PSC, and their competitive responses are governed by the regulatory process. They also receive little or no subsidies. However, in the new competitive environment, those of us who operate private for-profit firms suddenly find ourselves in direct competition with Cooperatives that: 1) are heavily subsidized by the Federal Universal Service Fund (millions of dollars each year), 2) pay much lower tax rates, and are exempt from many taxes (effective rates as low as 5%), 3) are totally exempt from PSC regulation.

The authorization for a potential new state subsidy system should be allowed to die its natural death on December 31, 2001 as current law provides. This law was first enacted in 1997, in the wake of the passage of the 1996 Federal Telecommunications Act, in the hysteria over the dramatic and rapid impacts that Act might have in Montana. Over the ensuing four years, those fears proved to be premature. In fact, not one single Petition or action has ever been submitted by any company or other party, to initiate or request the implementation of a state universal service fund. The alleged "urgent need" for this law in 1997 has never materialized in four years.

We believe the Federal Universal Service Funds currently being received by some companies (primarily the Cooperatives) are, in some instances, being expended in competitive ventures outside of the rural areas where those funds are intended to be used. In fact, it is contrary to law to use such funds outside of designated rural areas, or support other than basic telephone services. Nevertheless, these laws have gone unenforced, which results in a distorted competitive scenario, discouraging investment of private

capital, and eroding our state tax base. When private for profit companies, such as Ronan Telephone, have attempted to petition to enforce these laws, we have been consistently frustrated by the Montana law which currently exempts Cooperatives from any PSC jurisdiction (unlike most other states). Even the potential misuse of the Federal subsidy funds is the most vivid and telling argument against HB 564. No Montana company, new start-up company, or out-of-state company, considering investing in Montana, will have any incentive to invest in the current system of unregulated subsidized competition, which is clearly economically inefficient and contrary to the public interest.

This Bill is unnecessary, unwise and unenforceable. It would only throw consumer's tax dollars into an already flawed system. This Bill should only be considered only after the existing problems are fixed:

On a lighter note, I find it humorous that in the House, it was the Republicans who passed this wealth redistribution scheme, and the Democrats who opposed it. I am hoping that the Senate Republicans will restore my former view of the Republican party and reject this highly unusual and ill advised tax bill.

**TESTIMONY IN OPPOSITION TO HOUSE BILL NO. 564
BEFORE THE SENATE ENERGY AND TELECOMMUNICATIONS COMMITTEE
BY HOT SPRINGS TELEPHONE COMPANY**

March 20, 2001

Presented by Ivan C. Evilsizer, Attorney for Hot Springs Telephone Co.

Hot Springs Telephone Company strongly opposes the passage of House Bill No. 564, which would remove the sunset provisions of the current state universal service fund authorization and otherwise amend current law. This law, originally enacted in 1997, was designed to grant legal authority to the Montana Public Service Commission, to create and administer a "State Universal Service Fund" (to subsidize financially support- the provision of basic telephone service at reasonable rates). Such a fund would supplement the existing "Federal Universal Service Fund", from which Montana currently receives approximately \$45 million per year.

Montana does not need a new tax of any kind, and certainly not another "line item" tax on telephone bills, that will hurt low, fixed and middle income individuals the hardest. Furthermore, the Montana telecommunications industry should not be encouraged to engage in subsidized competitive efforts until the problems in the current system and competitive playing field are addressed. The existing law, and as it is proposed in this Bill, is seriously flawed by its omission of any enforcement or regulatory authority over many of the firms that would be receiving the bulk of the funds under this law (namely, the unregulated cooperatives).

The authorization for a potential new state subsidy system should be allowed to die its natural death on December 31, 2001 as current law provides. This law was first enacted in 1997, in the wake of the 1996 Federal Telecommunications Act, in hysteria over the dramatic and rapid impacts that Act might have in Montana. Over the ensuing four years, those fears proved to be premature. In fact, not one single Petition or action has ever been submitted by any company or other party, to initiate or request the implementation of a state universal service fund under the existing law. The alleged "urgent need" for this law in 1997 has never materialized in four years.

Even the proponents acknowledge that any potential need for additional state subsidies are many years away. If there are significant developments in the future, this body can consider the issue two years from now. Montana does not need unnecessary and unused laws on the books.

The competitive playing field in the Montana telecommunications industry is grossly unlevel and in desperate need of study and correction. This body should not throw more money into a flawed and unenforceable system. Most companies in this industry are fully taxed, and fully regulated. However, in the new competitive environment, private for-profit firms are in direct competition with Cooperatives that: 1) pay much lower tax rates, and are exempt from many taxes, and 2) are totally exempt from PSC regulation, and therefore can charge any rate, are exempt from service quality regulation, and may respond competitively with complete freedom and impunity. Regulated for-profit companies like Hot Springs and other companies contemplating new investments in the state, do not have these advantages. Likewise, any subsidies received from this proposed new fund should be directed toward the intended basic rural services, and an enforceable regulatory system in place to assure their appropriate use. This Bill completely fails to provide any such assurance or regulation. No Montana company, new start-up company, or out-of-state company considering investing in Montana, will have any incentive to invest in a system of unregulated subsidized competition, which would be permitted by this Bill, but is clearly economically inefficient and contrary to the public interest.

This Bill is unnecessary, unwise and unenforceable. It would only throw consumer's dollars into an already flawed system. This Bill should only be considered after the existing problems are fixed, and the new funds can be assured to flow to the actual identified needs.

Hot Springs Telephone strongly urges your rejection of this Bill. I would be glad to answer any questions.

DATE 3/20/01

55

DATE 3/20/01

SENATE COMMITTEE ON Energy & Telecommunications

BILLS BEING HEARD TODAY: HB 564

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Geoff Feiss	442-4316	MT Telecom Assn	HB 564	✓	
Mike Strand	443-1940	MT Independent Telecom Sys	HB 564	✓	
BS Rowe	444-6167	PSC	564	✓	
Russ Cravens	441-7230	Qwest	HB 564	✓	
John Fitzpatrick	442-9194	Touch America	HB 564	✓	
Jay Preston	676-9212	Ronan Telephone Co.	HB 564		✓
Mark Baker	449-3118	AT&T	HB 564	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN MACK COLE**, on March 27, 2001 at 3:15 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Tom Zook (R)

Members Excused: Sen. Mike Taylor (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 517, 3/23/2001; SB 518,
3/26/2001; SB 521, 3/26/2001
Executive Action: SB 512; SB 502; SB 503; SB
509; SB 515; SB 517; SB 518;
SB 521; HB 564

HEARING ON SB 517

Sponsor: SENATOR DON RYAN, SD 22, Great Falls

Proponents: Greg Groepper, Energy Share

SENATOR RYAN referred to page 3, line 8, and was worried about the price. **SENATOR DOHERTY** said there wasn't a level, but that was existing law. If the Governor were to use these powers, she would have to contend with many different variables.

Substitute Motion/Vote: **SENATOR JOHNSON** made a substitute motion that **SB 521 BE TABLED**. Substitute motion failed 2-9 with Johnson and Zook voting aye.

Vote: Motion carried 10-1 with Johnson voting no.

EXECUTIVE ACTION ON HB 564

SENATOR HALLIGAN mentioned that there was a question whether the PSC had the authority to regulate the telecommunications cooperatives and others with respect to their USBC. **Martin Jacobson, PSC**, submitted written testimony from Bob Rowe, EXHIBIT(ens69b06).

Motion: **SENATOR ELLIS** moved that **HB 564 BE CONCURRED IN**.

Substitute Motion/Vote: **SENATOR MCCARTHY** made a substitute motion and moved **AMENDMENT HB056401.ATE, EXHIBIT(ens69b07)**. Substitute motion carried 10-1 with Johnson voting no.

Vote: Motion carried 8-3 with Johnson, McNutt, and Taylor voting no.

ADJOURNMENT

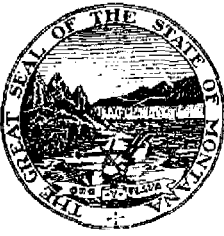
Adjournment: 5:30 P.M.

SEN. MACK COLE, Chairman

MISTI PILSTER, Secretary

MC/MP

EXHIBIT(ens69bad)



PUBLIC SERVICE COMMISSION

Senate Energy & Telecomm. Comm.

Exhibit No. 6

Date 3/27/01

Bill No. HB 564

P O Box 202601

Helena, Montana 59620-

Telephone: (406) 444-6167

FAX #: (406) 444-7618

E-Mail: browe@state.mt.us

Bob Rowe, Commissioner
District 5

March 27, 2001

Senator Mack Cole
Senate Energy and Telecommunications Committee
P.O. Box 2011702
State Capitol
Helena, Montana 59620-1702

RE: HB 564, Revise Universal Service Telecommunications Laws

Dear Chairman Cole,

I have reviewed with an attorney at the Public Service Commission (PSC) whether the PSC would have adequate authority to ensure that funds paid out of a state universal service fund are expended appropriately. In the view of our attorney, with which I concur, provisions within HB 564 and statutes related to HB 564 imply the PSC has the required authority.

Section 69-3-840(1), MCA, provides the PSC has authority to designate recipients of the fund, notwithstanding the carrier's exemption from further regulation by the PSC. The PSC is given rulemaking authority to implement § 69-3-840, MCA (§ 69-3-833, MCA), and for administration of the fund (HB 564, Sec. 2, amending § 69-3-843(3), MCA). PSC rules could include an enforceable condition that designated recipients use funds only for the intended purposes.

I have worked to bring interested parties together to resolve various issues as this bill has moved forward. Adequacy of PSC oversight of funds disbursed to member-controlled cooperatives appears to be the final unresolved issue. If the Legislature believes that additional clarifying language concerning PSC authority is appropriate, I suggest the following sentence be inserted at the end of new subsection 3 (which begins "ANY FUNDS RECEIVED..."): "THE COMMISSION HAS AUTHORITY TO ENSURE FUNDS ARE USED FOR THESE PURPOSES BY ALL TELECOMMUNICATIONS CARRIERS RECEIVING FUNDS, NOTWITHSTANDING THE CARRIER'S EXEMPTION FROM FURTHER REGULATION BY THE COMMISSION." This language parallels existing PSC authority concerning designation of "Eligible Telecommunications Carriers" to receive federal and state high cost fund support in § 69-3-840, MCA.

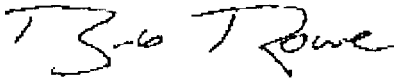
Neither the PSC's attorney nor I would recommend further additions to HB 564, including language amending § 35-18-104, MCA (the exemption from regulation for electric and telephone

March 27, 2001
Senator Mack Cole
Page 2

cooperatives); amending the HB 564 to reference § 35-18-104, MCA; or amending HB 564 to reference specific statutes excluded from the exemption in § 35-18-104, MCA. Such amendments would be unnecessarily complicated, could unnecessarily broaden the scope of HB 564; and unless carefully drafted could cause unintended authority-limitation problems in other areas (e.g., specifically identifying one statute may weigh against implied authority regarding statutes not identified).

The views expressed in this letter are my own and are not presented on behalf of the Montana Public Service Commission. If you have any questions or comments please feel free to contact me. Thank you for your work on this important subject.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Rowe". The signature is stylized with a large, sweeping "B" and a cursive "Rowe".

Bob Rowe

Amendments to House Bill No. 564
3rd Reading Copy

Requested by Representative Alan Olson

For the Senate Energy and Telecommunications Committee

Prepared by Todd Everts
March 22, 2001 (8:17AM)

1. Page 2.

Following: line 11

Insert: "(5) For the purposes of this section, "interexchange services" means telecommunications long-distance services."

2. Page 3, line 4.

Following: "total"

Insert: "intrastate"

3. Page 3, line 5.

Following: "state."

Insert: "If the high-cost mechanisms of the federal universal service program are eliminated, contributions must be determined on a percentage of total intrastate and interstate retail revenue for all telecommunications carriers registered in the state."

- END -

DATE 3/27/01

62



SENATE STANDING COMMITTEE REPORT

March 27, 2001

Page 1 of 1

Mr. President:

We, your committee on **Energy and Telecommunications** recommend that **House Bill 564** (third reading copy -- blue) be **concurred in as amended**.

Signed: 
Senator Mack Cole, Chair

To be carried by Senator Mack Cole

And, that such amendments read:

1. Page 2.

Following: line 11

Insert: "(5) For the purposes of this section, "interexchange services" means telecommunications long-distance services."

2. Page 3, line 4.

Following: "total"

Insert: "intrastate"

3. Page 3, line 5.

Following: "state."

Insert: "If the high-cost mechanisms of the federal universal service program are eliminated, contributions must be determined on a percentage of total intrastate and interstate retail revenue for all telecommunications carriers registered in the state."

- END -

Committee Vote:

Yes 8, No 3.

691816SC.srf

63

SENATE JOURNAL
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Nays: Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Ekegren, Grimes, Harrington, Holden, Mahlum, McCarthy, McNutt, Mohl, Pease, Roush, Shea, Stapleton, Tash, Thomas, Waterman, Wells, Zook, Mr. President.

Total 25

Absent or not voting: Elliott, Stonington.

Total 2

Excused: Butcher.

Total 1

Senator Elliott excused at this time.

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Session 1

Senator Thomas moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Grimes in the chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

HB 195 - Senator R. Holden moved **HB 195** be concurred in. Motion carried unanimously.

Senator Elliott present at this time.

HB 214 - Senator R. Holden moved **HB 214** be concurred in. Motion carried unanimously.

HB 564 - Senator Cole moved **HB 564** be concurred in. Motion carried as follows:

Yeas: Berry, Bohlinger, Cobb, Cocchiarella, Cole, Crismore, DePratu, Ekegren, Ellis, Grimes, Grosfield, Harrington, Jergeson, Keenan, Kitzenberg, Mahlum, McCarthy, McNutt, Miller, Nelson, Pease, Roush, Ryan, Shea, Tash, Taylor, Tester, Thomas, Wells, Zook, Mr. President.

Total 31

Nays: Bishop, Christiaens, Doherty, Ellingson, Elliott, Franklin, Halligan, Hargrove, Holden, Johnson, Mohl, O'Neil, Sprague, Stonington, Toole, Waterman.

Total 16

Absent or not voting: Glaser, Stapleton.

Total 2

Excused: Butcher.

Total 1

HB 146 - Senator Halligan moved **HB 146** be concurred in. Motion carried as follows:

HOUSE BILL NO. 564

INTRODUCED BY A. OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE UNIVERSAL SERVICE TELECOMMUNICATIONS LAWS; REQUIRING THE PUBLIC SERVICE COMMISSION UPON PETITION OR ITS OWN MOTION TO INVESTIGATE THE NEED FOR A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE AUTHORITY TO ESTABLISH A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE AUTHORITY TO ADOPT RULES FOR THE ADMINISTRATION OF THE UNIVERSAL SERVICE FUND; PROVIDING FOR THE COLLECTION OF CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND ON A QUARTERLY RATHER THAN A MONTHLY BASIS; CLARIFYING THE METHODOLOGY FOR CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND; CLARIFYING THE PAYMENT PROCESS FROM THE UNIVERSAL SERVICE FUND; AMENDING SECTIONS 69-3-842, 69-3-843, 69-3-844, AND 69-3-845, MCA; REPEALING SECTION 41, CHAPTER 349, LAWS OF 1997, AND SECTION 6, CHAPTER 187, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-842, MCA, is amended to read:

"69-3-842. ~~{Temporary}~~ Universal service fund established -- purpose. (1) ~~Pursuant to a determination of need, the commission shall establish and administer~~ Upon petition FOR GOOD CAUSE by a telecommunications carrier or the consumer counsel or on the commission's own motion, the commission shall investigate the need for a fund to assist eligible telecommunications carriers in providing affordable telecommunications services in high-cost areas. This investigation must take into account the evolving nature of universal service as well as changes in federal and state telecommunications support systems, including but not limited to universal service funds and access reform.

(2) If the commission determines that a state universal service fund is necessary to promote the policies in 69-3-841 and is consistent with the public interest, the commission shall establish a state universal service fund. The fund must provide support for the following services:

- (a) voice grade access to the public switched network, including some usage;
- (b) dual-tone multifrequency (DTMF or "touch tone") signaling or its equivalent;

1 (c) single-party service;

2 (d) access to emergency services, including access to 9-1-1, where available, and access to
3 enhanced 9-1-1 when requested by a telecommunications carrier's local community and when the
4 telecommunications carrier has technical capacity to provide it;

5 (e) access to operator services;

6 (f) access to interexchange services; and

7 (g) access to directory assistance.

8 ~~††(3)~~ The fund must support only access to the services listed in subsections ~~††(d)~~ (2)(d) through
9 ~~††(g)~~ (2)(g) and not support the services themselves.

10 ~~††(4)~~ The fund must be administered to ensure that its operation is competitively and
11 technologically neutral.

12 (5) FOR THE PURPOSES OF THIS SECTION, "INTEREXCHANGE SERVICES" MEANS TELECOMMUNICATIONS
13 LONG-DISTANCE SERVICES. ~~(Terminates December 31, 2001 sec. 6, Ch. 187, L. 1999.)~~

14

15 **Section 2.** Section 69-3-843, MCA, is amended to read:

16 **"69-3-843. ~~(Temporary)~~ Fund administrator -- commission rulemaking authority.** (1) A fiscal agent
17 and daily administrator must be selected by the commission to receive and distribute funds under
18 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section.

19 (2) The fiscal agent must be selected by the commission based upon a competitive bidding process
20 after an opportunity for public comment on the specific qualifications required of the fiscal agent. A
21 telecommunications carrier is not eligible to be the fiscal agent. The duties of the fiscal agent must be
22 determined by a contract consistent with 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section. The
23 contract term of the fiscal agent ~~must expire December 31, 2001~~ may not be for a period greater than 3
24 years.

25 (3) The commission may adopt rules for the administration of the fund. ~~fiscal agent shall provide~~
26 ~~monthly reports of fund activities to the commission and shall provide audits annually by a certified public~~
27 ~~accountant in a manner determined by and under the direction of the commission.~~

28 ~~———— (4) The fund financial accounts of the fiscal agent must be available at reasonable times to any~~
29 ~~telecommunications carrier in the state and to the public. The commission may investigate the accounts~~
30 ~~and practices of the fiscal agent and enter orders concerning the accounts and practices. (Terminates~~

1 ~~December 31, 2001 sec. 6, Ch. 187, L. 1999.)"~~

2

3 **Section 3.** Section 69-3-844, MCA, is amended to read:

4 **"69-3-844. (Temporary) Contributions to fund.** (1) The fiscal agent shall collect contributions from
5 all telecommunications carriers on a ~~monthly~~ QUARTERLY basis, based on a ~~July 1 to June 30 fiscal~~ JANUARY
6 1 TO DECEMBER 31 CALENDAR year. Those contributions must be determined on a percentage of total
7 INTRASTATE RETAIL revenue for all telecommunications carriers registered in the state. IF THE HIGH-COST
8 MECHANISMS OF THE FEDERAL UNIVERSAL SERVICE PROGRAM ARE ELIMINATED, CONTRIBUTIONS MUST BE DETERMINED ON
9 A PERCENTAGE OF TOTAL INTRASTATE AND INTERSTATE RETAIL REVENUE FOR ALL TELECOMMUNICATIONS CARRIERS
10 REGISTERED IN THE STATE. ~~Initial contributions to the fund may only be collected for the 2-month period prior~~
11 ~~to the effective date of distributions from the fund and must be calculated as follows:~~

12 ~~—— (a) determine the total retail revenue for all telecommunications carriers for the immediately~~
13 ~~preceding calendar year;~~

14 ~~—— (b) determine the total funds needed for distributions in the next fiscal year as authorized pursuant~~
15 ~~to 69-3-845;~~

16 ~~—— (c) compute a uniform percentage of the amount determined in subsection (1)(a) that will produce~~
17 ~~an amount equal to the fund total calculated in subsection (1)(b);~~

18 ~~—— (d) adjust the percentage multiplier computed in subsection (1)(c) to recover or reimburse any fund~~
19 ~~shortfalls or excesses in the previous fiscal year, including uncollectibles, new providers seeking support,~~
20 ~~cost of administration, and auditing; and~~

21 ~~—— (e) send notice of the current uniform percentage and appropriate remittance forms to each~~
22 ~~telecommunications carrier at least 2 months prior to the effective date of the application of the~~
23 ~~percentage.~~

24 (2) The commission shall adopt ~~procedural~~ rules to govern collection of the contributions required
25 by this section, as well as rules allowing the fiscal agent and daily administrator to assess late fees and
26 interest on delinquent payments from telecommunications carriers. The fiscal agent is specifically
27 authorized to enforce the contribution requirements of this section through suit in the district courts of
28 Montana, and the prevailing party in an action is entitled to the recovery of costs and attorney fees
29 incurred in that action.

30 (3) ANY FUNDS RECEIVED BY AN ELIGIBLE TELECOMMUNICATIONS CARRIER FROM THE STATE HIGH-COST FUND

1 MUST BE USED FOR THE PROVISION, MAINTENANCE, AND UPGRADING OF FACILITIES AND SERVICES FOR WHICH THE
2 SUPPORT IS INTENDED.

3 ~~{3}~~(4) Any reduction in telecommunications carrier access expenses because of the removal of
4 implicit subsidies inherent in telecommunications carrier access rates must be passed through to Montana
5 end-user customer retail rates. ~~(Terminates December 31, 2001 sec. 6, Ch. 187, L. 1999.)~~"

6

7 **Section 4.** Section 69-3-845, MCA, is amended to read:

8 **"69-3-845. ~~{Temporary}~~ Distributions Payments from fund -- calculation of costs.** (1) Subject to
9 ~~the requirements of this section, payments~~ Payments from the fund must be made from collected
10 contributions by the fiscal agent to qualifying eligible telecommunications carriers, on a ~~monthly~~ quarterly
11 basis, pursuant to rules adopted by the commission.

12 (2) Only eligible telecommunications carriers that offer the telecommunications services described
13 in ~~69-3-842(1)~~ 69-3-842(2) to all customers in a designated support area and that advertise the availability
14 of the telecommunications services and the charges for the telecommunications services using media of
15 general distribution may receive support from the fund for the designated support area.

16 ~~(3) Distributions must be calculated for the designated support areas established by the~~
17 ~~commission. In the case of an area served by a rural telephone company, the term "designated support~~
18 ~~area" means the rural telephone company's Montana service area unless the rural telephone company~~
19 ~~voluntarily adopts a proxy model for the calculation of the rural telephone company's cost of~~
20 ~~telecommunications services under subsection (6). After adoption of a proxy model, the rural telephone~~
21 ~~company's designated support area must be an area designated by the commission, which may be smaller~~
22 ~~than a wire center. The term designated support area for all other telecommunications carriers means a~~
23 ~~geographic area as established by the commission, which must be smaller than a wire center.~~

24 ~~—— (4) Support for the services listed in 69-3-842(1) must be calculated as the difference between~~
25 ~~the costs determined in each designated support area and the affordability benchmark in that support area.~~
26 ~~The commission shall adopt rules to determine affordability benchmarks.~~

27 ~~—— (5) Except as provided in subsection (6), for rural telephone companies and other eligible~~
28 ~~telecommunications carriers offering services in a designated support area served by a rural telephone~~
29 ~~company, the average cost for each line must be calculated and submitted, based on the preceding~~
30 ~~calendar year, to the fiscal agent as follows:~~

~~1 (a) If an additional eligible telecommunications carrier has not been designated pursuant to
2 69-3-840(3), the rural telephone company's total unseparated loop cost, as defined by federal separation
3 rule methodology in effect on December 31, 1996, must be added to the switching costs, local transport
4 costs, and customer operations costs assigned to the telecommunications services set forth in
5 69-3-842(1), which must be calculated using the methodology set forth in federal communications
6 commission jurisdictional separation rules in effect as of December 31 of each calendar year. This total
7 cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop
8 costs recovered through intrastate telecommunications carrier common line charges to long-distance
9 companies.~~

~~10 (b) Upon the designation of an additional eligible telecommunications carrier pursuant to
11 69-3-840(3) in a designated support area served by a rural telephone company, the additional eligible
12 telecommunications carrier has access to the fund on the same basis as the rural telephone company.
13 Upon the designation of the additional eligible telecommunications carrier, both the carrier and the rural
14 telephone company must receive distributions from the fund based upon the rural telephone company's
15 average cost for each line disaggregated to geographic areas smaller than a wire center. The support for
16 each line for each geographic area must be based upon the rural telephone company's costs, as determined
17 in subsection (5)(a), distributed to each of the geographic areas on the basis of relative distribution factors
18 established by a cost proxy model adopted by the commission.~~

~~19 (6) Except as provided in subsection (5)(b), for companies that are not rural telephone companies
20 and for rural telephone companies voluntarily electing to use a cost proxy model, the average cost for each
21 line in designated support areas must be calculated based on the cost proxy model adopted by the
22 commission. This total per-line cost must be reduced by any federal universal service support, interstate
23 allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common
24 line charges to long-distance companies.~~

~~25 (7) In determining any proxy mechanism under this section, the commission shall use a model that:~~

~~26 (a) targets support to a geographic area smaller than a wire center;~~

~~27 (b) uses acceptable outside plant design and costing principles;~~

~~28 (c) uses reasonable switch design and costing principles;~~

~~29 (d) includes a reasonable share of the joint and common costs of the telecommunications carrier;~~

~~30 (e) meets standards for documenting model logic and the sources of cost data input; and~~

1 ~~(f) meets reasonableness tests to ensure that model outputs are representative of costs that can~~
2 ~~be reasonably expected in the construction of a network and that the network is capable of providing~~
3 ~~telecommunications services that meet the telecommunications services quality standards of the~~
4 ~~commission and federal regulators.~~

5 ~~(8)(3)~~ An eligible telecommunications carrier providing telecommunications services through resale
6 of another telecommunications carrier's telecommunications services or facilities may not receive support
7 for those telecommunications services or facilities if the rates charged to an eligible telecommunications
8 carrier by the other telecommunications carrier have been reduced by a contribution from universal service
9 funds under this section.

10 ~~(9)(4)~~ Costs of administering the fund must be paid from the fund. ~~(Terminates December 31,~~
11 ~~2001 sec. 6, Ch. 187, L. 1999.)"~~

12

13 NEW SECTION. **Section 5. Repealer.** Section 41, Chapter 349, Laws of 1997, and section 6,
14 Chapter 187, Laws of 1999, are repealed.

15

16 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

17

- END -

HOUSE BILL NO. 564

INTRODUCED BY A. OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE UNIVERSAL SERVICE TELECOMMUNICATIONS LAWS; REQUIRING THE PUBLIC SERVICE COMMISSION UPON PETITION OR ITS OWN MOTION TO INVESTIGATE THE NEED FOR A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE AUTHORITY TO ESTABLISH A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE AUTHORITY TO ADOPT RULES FOR THE ADMINISTRATION OF THE UNIVERSAL SERVICE FUND; PROVIDING FOR THE COLLECTION OF CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND ON A QUARTERLY RATHER THAN A MONTHLY BASIS; CLARIFYING THE METHODOLOGY FOR CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND; CLARIFYING THE PAYMENT PROCESS FROM THE UNIVERSAL SERVICE FUND; AMENDING SECTIONS 69-3-842, 69-3-843, 69-3-844, AND 69-3-845, MCA; REPEALING SECTION 41, CHAPTER 349, LAWS OF 1997, AND SECTION 6, CHAPTER 187, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-842, MCA, is amended to read:

"69-3-842. ~~{Temporary}~~ Universal service fund established -- purpose. (1) ~~Pursuant to a determination of need, the commission shall establish and administer~~ Upon petition FOR GOOD CAUSE by a telecommunications carrier or the consumer counsel or on the commission's own motion, the commission shall investigate the need for a fund to assist eligible telecommunications carriers in providing affordable telecommunications services in high-cost areas. This investigation must take into account the evolving nature of universal service as well as changes in federal and state telecommunications support systems, including but not limited to universal service funds and access reform.

(2) If the commission determines that a state universal service fund is necessary to promote the policies in 69-3-841 and is consistent with the public interest, the commission shall establish a state universal service fund. The fund must provide support for the following services:

- (a) voice grade access to the public switched network, including some usage;
- (b) dual-tone multifrequency (DTMF or "touch tone") signaling or its equivalent;

1 (c) single-party service;

2 (d) access to emergency services, including access to 9-1-1, where available, and access to
3 enhanced 9-1-1 when requested by a telecommunications carrier's local community and when the
4 telecommunications carrier has technical capacity to provide it;

5 (e) access to operator services;

6 (f) access to interexchange services; and

7 (g) access to directory assistance.

8 ~~(2)(3)~~ The fund must support only access to the services listed in subsections ~~(1)(d)~~ (2)(d) through
9 ~~(1)(g)~~ (2)(g) and not support the services themselves.

10 ~~(3)(4)~~ The fund must be administered to ensure that its operation is competitively and
11 technologically neutral.

12 (5) FOR THE PURPOSES OF THIS SECTION, "INTEREXCHANGE SERVICES" MEANS TELECOMMUNICATIONS
13 LONG-DISTANCE SERVICES. (Terminates December 31, 2001 sec. 6, Ch. 187, L. 1999.)"

14

15 **Section 2.** Section 69-3-843, MCA, is amended to read:

16 **"69-3-843. ~~(Temporary)~~ Fund administrator -- commission rulemaking authority.** (1) A fiscal agent
17 and daily administrator must be selected by the commission to receive and distribute funds under
18 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section.

19 (2) The fiscal agent must be selected by the commission based upon a competitive bidding process
20 after an opportunity for public comment on the specific qualifications required of the fiscal agent. A
21 telecommunications carrier is not eligible to be the fiscal agent. The duties of the fiscal agent must be
22 determined by a contract consistent with 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section. The
23 contract term of the fiscal agent ~~must expire December 31, 2001~~ may not be for a period greater than 3
24 years.

25 (3) The commission may adopt rules for the administration of the fund. ~~fiscal agent shall provide~~
26 ~~monthly reports of fund activities to the commission and shall provide audits annually by a certified public~~
27 ~~accountant in a manner determined by and under the direction of the commission.~~

28 ~~— (4) The fund financial accounts of the fiscal agent must be available at reasonable times to any~~
29 ~~telecommunications carrier in the state and to the public. The commission may investigate the account~~
30 ~~and practices of the fiscal agent and enter orders concerning the accounts and practices. (Terminates~~

1 ~~December 31, 2001 sec. 6, Ch. 187, L. 1999.~~"

2

3 **Section 3.** Section 69-3-844, MCA, is amended to read:

4 **"69-3-844. ~~(Temporary)~~ Contributions to fund.** (1) The fiscal agent shall collect contributions from
5 all telecommunications carriers on a ~~monthly~~ QUARTERLY basis, based on a ~~July 1 to June 30 fiscal~~ JANUARY
6 1 TO DECEMBER 31 CALENDAR year. Those contributions must be determined on a percentage of total
7 INTRASTATE RETAIL revenue for all telecommunications carriers registered in the state. IF THE HIGH-COST
8 MECHANISMS OF THE FEDERAL UNIVERSAL SERVICE PROGRAM ARE ELIMINATED, CONTRIBUTIONS MUST BE DETERMINED ON
9 A PERCENTAGE OF TOTAL INTRASTATE AND INTERSTATE RETAIL REVENUE FOR ALL TELECOMMUNICATIONS CARRIERS
10 REGISTERED IN THE STATE. ~~Initial contributions to the fund may only be collected for the 2-month period prior~~
11 ~~to the effective date of distributions from the fund and must be calculated as follows:~~

12 ~~—— (a) determine the total retail revenue for all telecommunications carriers for the immediately~~
13 ~~preceding calendar year;~~

14 ~~—— (b) determine the total funds needed for distributions in the next fiscal year as authorized pursuant~~
15 ~~to 69-3-845;~~

16 ~~—— (c) compute a uniform percentage of the amount determined in subsection (1)(a) that will produce~~
17 ~~an amount equal to the fund total calculated in subsection (1)(b);~~

18 ~~—— (d) adjust the percentage multiplier computed in subsection (1)(c) to recover or reimburse any fund~~
19 ~~shortfalls or excesses in the previous fiscal year, including uncollectibles, new providers seeking support,~~
20 ~~cost of administration, and auditing, and~~

21 ~~—— (e) send notice of the current uniform percentage and appropriate remittance forms to each~~
22 ~~telecommunications carrier at least 2 months prior to the effective date of the application of the~~
23 ~~percentage.~~

24 (2) The commission shall adopt ~~procedural~~ rules to govern collection of the contributions required
25 by this section, as well as rules allowing the fiscal agent and daily administrator to assess late fees and
26 interest on delinquent payments from telecommunications carriers. The fiscal agent is specifically
27 authorized to enforce the contribution requirements of this section through suit in the district courts of
28 Montana, and the prevailing party in an action is entitled to the recovery of costs and attorney fees
29 incurred in that action.

30 (3) ANY FUNDS RECEIVED BY AN ELIGIBLE TELECOMMUNICATIONS CARRIER FROM THE STATE HIGH-COST FUND

1 MUST BE USED FOR THE PROVISION, MAINTENANCE, AND UPGRADING OF FACILITIES AND SERVICES FOR WHICH THE
2 SUPPORT IS INTENDED.

3 ~~(3)(4)~~ Any reduction in telecommunications carrier access expenses because of the removal of
4 implicit subsidies inherent in telecommunications carrier access rates must be passed through to Montana
5 end-user customer retail rates. ~~(Terminates December 31, 2001 sec. 6, Ch. 187, L. 1999.)~~

6
7 **Section 4.** Section 69-3-845, MCA, is amended to read:

8 **"69-3-845. ~~(Temporary) Distributions~~ Payments from fund -- calculation of costs.** (1) ~~Subject to~~
9 ~~the requirements of this section, payments~~ Payments from the fund must be made from collected
10 contributions by the fiscal agent to qualifying eligible telecommunications carriers, on a ~~monthly~~ quarterly
11 basis, pursuant to rules adopted by the commission.

12 (2) Only eligible telecommunications carriers that offer the telecommunications services described
13 in ~~69-3-842(1)~~ 69-3-842(2) to all customers in a designated support area and that advertise the availability
14 of the telecommunications services and the charges for the telecommunications services using media of
15 general distribution may receive support from the fund for the designated support area.

16 ~~(3) Distributions must be calculated for the designated support areas established by the~~
17 ~~commission. In the case of an area served by a rural telephone company, the term "designated support~~
18 ~~area" means the rural telephone company's Montana service area unless the rural telephone company~~
19 ~~voluntarily adopts a proxy model for the calculation of the rural telephone company's cost of~~
20 ~~telecommunications services under subsection (6). After adoption of a proxy model, the rural telephone~~
21 ~~company's designated support area must be an area designated by the commission, which may be smaller~~
22 ~~than a wire center. The term designated support area for all other telecommunications carriers means a~~
23 ~~geographic area as established by the commission, which must be smaller than a wire center.~~

24 ~~----- (4) Support for the services listed in 69-3-842(1) must be calculated as the difference between~~
25 ~~the costs determined in each designated support area and the affordability benchmark in that support area.~~
26 ~~The commission shall adopt rules to determine affordability benchmarks.~~

27 ~~----- (5) Except as provided in subsection (6), for rural telephone companies and other eligible~~
28 ~~telecommunications carriers offering services in a designated support area served by a rural telephone~~
29 ~~company, the average cost for each line must be calculated and submitted, based on the preceding~~
30 ~~calendar year, to the fiscal agent as follows:~~

~~1 (a) If an additional eligible telecommunications carrier has not been designated pursuant to
2 69-3-840(3), the rural telephone company's total unseparated loop cost, as defined by federal separation
3 rule methodology in effect on December 31, 1996, must be added to the switching costs, local transport
4 costs, and customer operations costs assigned to the telecommunications services set forth in
5 69-3-842(1), which must be calculated using the methodology set forth in federal communications
6 commission jurisdictional separation rules in effect as of December 31 of each calendar year. This total
7 cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop
8 costs recovered through intrastate telecommunications carrier common line charges to long-distance
9 companies.~~

~~10 (b) Upon the designation of an additional eligible telecommunications carrier pursuant to
11 69-3-840(3) in a designated support area served by a rural telephone company, the additional eligible
12 telecommunications carrier has access to the fund on the same basis as the rural telephone company.
13 Upon the designation of the additional eligible telecommunications carrier, both the carrier and the rural
14 telephone company must receive distributions from the fund based upon the rural telephone company's
15 average cost for each line disaggregated to geographic areas smaller than a wire center. The support for
16 each line for each geographic area must be based upon the rural telephone company's costs, as determined
17 in subsection (5)(a), distributed to each of the geographic areas on the basis of relative distribution factors
18 established by a cost proxy model adopted by the commission.~~

~~19 (6) Except as provided in subsection (5)(b), for companies that are not rural telephone companies
20 and for rural telephone companies voluntarily electing to use a cost proxy model, the average cost for each
21 line in designated support areas must be calculated based on the cost proxy model adopted by the
22 commission. This total per-line cost must be reduced by any federal universal service support, interstate
23 allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common
24 line charges to long-distance companies.~~

~~25 (7) In determining any proxy mechanism under this section, the commission shall use a model that:~~

- ~~26 (a) targets support to a geographic area smaller than a wire center;~~
- ~~27 (b) uses acceptable outside plant design and costing principles;~~
- ~~28 (c) uses reasonable switch design and costing principles;~~
- ~~29 (d) includes a reasonable share of the joint and common costs of the telecommunications carrier;~~
- ~~30 (e) meets standards for documenting model logic and the sources of cost data input; and~~

1 ~~_____ (f) meets reasonableness tests to ensure that model outputs are representative of costs that can~~
2 ~~be reasonably expected in the construction of a network and that the network is capable of providing~~
3 ~~telecommunications services that meet the telecommunications services quality standards of the~~
4 ~~commission and federal regulators.~~

5 ~~_____ (g)(3)~~ An eligible telecommunications carrier providing telecommunications services through resale
6 of another telecommunications carrier's telecommunications services or facilities may not receive support
7 for those telecommunications services or facilities if the rates charged to an eligible telecommunications
8 carrier by the other telecommunications carrier have been reduced by a contribution from universal service
9 funds under this section.

10 ~~(9)(4)~~ Costs of administering the fund must be paid from the fund. ~~(Terminates December 31,~~
11 ~~2001 sec. 6, Ch. 187, L. 1999.)"~~

12

13 NEW SECTION. **Section 5. Repealer.** Section 41, Chapter 349, Laws of 1997, and section 6,
14 Chapter 187, Laws of 1999, are repealed.

15

16 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

17

- END -

SENATE JOURNAL
SEVENTY-THIRD LEGISLATIVE DAY - MARCH 31, 2001

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Bohlinger, Ellingson.
Total 2

HB 543, as amended by the Senate, concurred in as follows:

Yeas: Berry, Bishop, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Elliott, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harrington, Holden, Jergeson, Johnson, Keenan, Kitzenberg, Mahlum, McCarthy, McNutt, Miller, Mohl, O'Neil, Pease, Roush, Ryan, Shea, Sprague, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Toole, Waterman, Wells, Zook, Mr. President.
Total 45

Nays: Ellingson, Ellis, Franklin, Nelson.
Total 4

Paired: Tester, Aye; Ellingson, No.

Absent or not voting: None.
Total 0

Excused: Bohlinger.
Total 1

HB 559, as amended by the Senate, concurred in as follows:

Yeas: Berry, Bishop, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Elliott, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harrington, Holden, Jergeson, Johnson, Keenan, Kitzenberg, Mahlum, McCarthy, McNutt, Miller, Mohl, Nelson, O'Neil, Pease, Roush, Ryan, Shea, Sprague, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Toole, Waterman, Wells, Zook, Mr. President.
Total 48

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Bohlinger, Ellingson.
Total 2

HB 564, as amended by the Senate, concurred in as follows:

Yeas: Berry, Bishop, Butcher, Cobb, Cocchiarella, Cole, DePratu, Ekegren, Ellis, Grimes, Grosfield, Halligan, Hargrove, Holden, Jergeson, Kitzenberg, Mahlum, McNutt, Miller, Mohl, Nelson, Roush, Stapleton, Stonington, Tash,

SENATE JOURNAL
SEVENTY-THIRD LEGISLATIVE DAY - MARCH 31, 2001

Tester, Thomas, Toole, Wells, Zook, Mr. President.
Total 31

Nays: Christiaens, Crismore, Doherty, Ellingson, Elliott, Franklin, Glaser, Harrington, Johnson, Keenan, McCarthy, O'Neil, Pease, Ryan, Shea, Sprague, Taylor, Waterman.
Total 18

Paired: Tester, Aye; Ellingson, No.

Absent or not voting: None.
Total 0

Excused: Bohlinger.
Total 1

HB 572, as amended by the Senate, concurred in as follows:

Yeas: Berry, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Elliott, Ellis, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harrington, Holden, Jergeson, Johnson, Keenan, Kitzenberg, Mahlum, McCarthy, McNutt, Miller, Mohl, Nelson, O'Neil, Pease, Roush, Ryan, Shea, Sprague, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Waterman, Wells, Zook, Mr. President.
Total 45

Nays: Bishop, Franklin, Toole.
Total 3

Absent or not voting: None.
Total 0

Excused: Bohlinger, Ellingson.
Total 2

HB 573, as amended by the Senate, concurred in as follows:

Yeas: Berry, Butcher, Cobb, Cocchiarella, Cole, Crismore, DePratu, Ekegren, Ellis, Grimes, Grosfield, Hargrove, Holden, Johnson, Keenan, Mahlum, McCarthy, McNutt, Miller, Mohl, Nelson, O'Neil, Roush, Shea, Sprague, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Wells, Zook, Mr. President.
Total 34

Nays: Bishop, Bohlinger, Christiaens, Doherty, Ellingson, Elliott, Franklin, Glaser, Halligan, Harrington, Jergeson, Kitzenberg, Pease, Ryan, Toole, Waterman.
Total 16

Paired: Berry, Zook, Ayes; Bohlinger, Ellingson, Noes.

Absent or not voting: None.
Total 0

HOUSE JOURNAL
EIGHTY-SECOND LEGISLATIVE DAY - APRIL 11, 2001

Motion carried as follows:

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Carney, Clancy, E. Clark, P. Clark, Curtiss, Dale, Davies, Dell, Devlin, Eggers, Erickson, Esp, Facey, Fisher, Forrester, Fuchs, Gillan, Haines, Hedges, Himmelberger, Holden, Jackson, Jent, Kasten, Laible, Laszloffy, Lawson, Lee, Lehman, Lenhart, Lewis, Lindeen, Masolo, Matthews, McCann, McKenney, Mood, Musgrove, Noennig, Olson, A. Peterson, K. Peterson, Price, Rice, Ripley, Rome, Schmidt, Schrumpf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Story, Thomas, Tramelli, Tropila, Vick, Waddill, Waitschies, Walters, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 78

Noes: Buzzas, Callahan, Cyr, Fritz, Gallik, Gallus, Galvin-Halcro, Golie, Gutsche, Harris, Hurdle, Jacobson, Jayne, Juneau, Kaufmann, Keane, Laslovich, Mangan, Newman, Raser, Wanzenried.

Total 21

Voted Absentee: Bookout-Reinicke, Aye.

Excused: None.

Total 0

Absent or not voting: Pattison.

Total 1

HB 3 - Senate Amendments - Representative Fisher moved Senate amendments to **HB 3** be **not** concurred in. Motion carried as follows:

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bookout-Reinicke, D. Brown, R. Brown, Brueggeman, Clancy, E. Clark, Curtiss, Dale, Davies, Devlin, Esp, Fisher, Fuchs, Hedges, Himmelberger, Holden, Jackson, Jayne, Kasten, Laible, Laszloffy, Lehman, Lewis, Masolo, McCann, McKenney, Olson, Pattison, Price, Rice, Ripley, Rome, Shockley, Sliter, Somerville, Steinbeisser, Story, Thomas, Vick, Waitschies, Walters, Whitaker, Witt, Wolery, Mr. Speaker.

Total 51

Noes: Bixby, Branae, Buzzas, Callahan, Carney, P. Clark, Cyr, Dell, Eggers, Erickson, Facey, Forrester, Fritz, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Gutsche, Haines, Harris, Hurdle, Jacobson, Jent, Juneau, Kaufmann, Keane, Laslovich, Lawson, Lee, Lenhart, Lindeen, Mangan, Matthews, Mood, Musgrove, Newman, Noennig, A. Peterson, K. Peterson, Raser, Schmidt, Schrumpf, Smith, Tramelli, Tropila, Waddill, Wanzenried, Younkin.

Total 49

Voted Absentee: Bookout-Reinicke, Aye.

Excused: None.

Total 0

Absent or not voting: None.

Total 0

HB 564 - Senate Amendments - Representative Olson moved Senate amendments to **HB 564** be concurred in. Motion carried as follows:

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EIGHTY-SECOND LEGISLATIVE DAY - APRIL 11, 2001

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, Clancy, E. Clark, P. Clark, Curtiss, Cyr, Dale, Davies, Dell, Devlin, Eggers, Erickson, Esp, Facey, Forrester, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Gutsche, Haines, Harris, Hedges, Himmelberger, Holden, Hurdle, Jackson, Jacobson, Jent, Juneau, Kasten, Kaufmann, Keane, Laible, Laslovich, Laszloffy, Lawson, Lee, Lehman, Lenhart, Lindeen, Mangan, Masolo, Matthews, McCann, McKenney, Mood, Musgrove, Newman, Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Raser, Rice, Ripley, Rome, Schmidt, Schrumpf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Story, Thomas, Tramelli, Vick, Waddill, Waitschies, Wanzenried, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 95

Noes: Jayne, Tropila, Walters.

Total 3

Voted Absentee: Bookout-Reinicke, Aye.

Excused: None.

Total 0

Absent or not voting: Fisher, Lewis.

Total 2

SB 348 - Conference Committee Report No. 1 - Representative Laszloffy moved the Conference Committee report to **SB 348** be adopted.

Representative Gallik moved to pass **SB 348 CC** to the bottom of the board. Motion failed as follows:

Ayes: Bixby, Branae, Buzzas, Callahan, Carney, Cyr, Dell, Erickson, Esp, Facey, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Gutsche, Harris, Himmelberger, Hurdle, Jent, Juneau, Kaufmann, Keane, Lenhart, Lindeen, Mangan, Musgrove, Noennig, K. Peterson, Raser, Schmidt, Thomas, Tramelli, Tropila, Waddill, Wanzenried.

Total 36

Noes: Adams, Andersen, Balyeat, Barrett, Bitney, R. Brown, Brueggeman, Clancy, E. Clark, P. Clark, Curtiss, Dale, Davies, Devlin, Fisher, Forrester, Fuchs, Haines, Hedges, Holden, Jackson, Jacobson, Jayne, Kasten, Laible, Laslovich, Laszloffy, Lawson, Lee, Lehman, Lewis, Masolo, McCann, McKenney, Mood, Olson, Pattison, A. Peterson, Price, Rice, Ripley, Rome, Schrumpf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Story, Vick, Waitschies, Walters, Whitaker, Wolery, Younkin, Mr. Speaker.

Total 56

Excused: Bookout-Reinicke.

Total 1

Absent or not voting: Bales, D. Brown, Eggers, Fritz, Matthews, Newman, Witt.

Total 7

Motion that the Conference Committee report to **SB 348** be adopted carried as follows:

Ayes: Adams, Andersen, Bales, Balyeat, Barrett, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Carney, Clancy, E. Clark, P. Clark, Curtiss, Cyr, Dale, Davies, Dell, Devlin, Erickson, Fisher, Forrester, Fuchs, Gallus, Gillan, Golie, Haines, Hedges, Himmelberger, Holden, Jackson, Jacobson, Kasten, Keane, Laible,

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EIGHTY-THIRD LEGISLATIVE DAY - APRIL 12, 2001

Total 0

HB 564, as amended by the Senate, passed as follows:

Ayes: Andersen, Bales, Barrett, Bitney, Bookout-Reinicke, D. Brown, R. Brown, Clancy, E. Clark, Curtiss, Dale, Devlin, Esp, Fisher, Forrester, Gallus, Gillan, Haines, Hedges, Himmelberger, Holden, Jent, Kasten, Laible, Lawson, Lehman, Lewis, Lindeen, Mangan, Masolo, Matthews, McKenney, Mood, Musgrove, Noennig, Olson, Pattison, A. Peterson, K. Peterson, Price, Rice, Ripley, Rome, Schrumpf, Shockley, Sliter, Smith, Somerville, Steinbeisser, Story, Thomas, Waddill, Waitschies, Walters, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 59

Noes: Adams, Balyeat, Bixby, Branae, Brueggeman, Buzzas, Callahan, Carney, P. Clark, Cyr, Davies, Dell, Eggers, Erickson, Facey, Fritz, Fuchs, Gallik, Galvin-Halcro, Golie, Gutsche, Harris, Hurdle, Jackson, Jacobson, Jayne, Juneau, Kaufmann, Keane, Laslovich, Laszloffy, Lee, Lenhart, McCann, Newman, Raser, Schmidt, Tramelli, Tropila, Vick, Wanzenried.

Total 41

Voted Absentee: Bookout-Reinicke, Aye.

Excused: None.

Total 0

Absent or not voting: None.

Total 0

HB 596, as amended by the Senate, passed as follows:

Ayes: Andersen, Bales, Balyeat, Barrett, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Clancy, E. Clark, Dale, Davies, Devlin, Eggers, Fisher, Forrester, Fuchs, Haines, Hedges, Himmelberger, Holden, Jackson, Jent, Kasten, Laible, Lawson, Lee, Lehman, Lewis, Masolo, Matthews, McKenney, Mood, Newman, Noennig, Olson, Pattison, A. Peterson, Price, Raser, Ripley, Rome, Schmidt, Schrumpf, Shockley, Sliter, Steinbeisser, Story, Thomas, Tropila, Vick, Waitschies, Walters, Whitaker, Witt, Wolery, Younkin, Mr. Speaker.

Total 59

Noes: Adams, Bixby, Buzzas, Callahan, Carney, P. Clark, Curtiss, Cyr, Dell, Erickson, Esp, Facey, Fritz, Gallik, Gallus, Galvin-Halcro, Gillan, Golie, Gutsche, Harris, Hurdle, Jacobson, Jayne, Juneau, Kaufmann, Keane, Laslovich, Laszloffy, Lenhart, Lindeen, Mangan, McCann, Musgrove, K. Peterson, Rice, Smith, Somerville, Tramelli, Waddill, Wanzenried.

Total 40

Voted Absentee: Bookout-Reinicke, Aye.

Excused: None.

Total 0

Absent or not voting: Bitney.

Total 1

HJR 42 adopted as follows:



AN ACT REVISING THE UNIVERSAL SERVICE TELECOMMUNICATIONS LAWS; REQUIRING THE PUBLIC SERVICE COMMISSION UPON PETITION OR ITS OWN MOTION TO INVESTIGATE THE NEED FOR A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE AUTHORITY TO ESTABLISH A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE AUTHORITY TO ADOPT RULES FOR THE ADMINISTRATION OF THE UNIVERSAL SERVICE FUND; PROVIDING FOR THE COLLECTION OF CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND ON A QUARTERLY RATHER THAN A MONTHLY BASIS; CLARIFYING THE METHODOLOGY FOR CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND; CLARIFYING THE PAYMENT PROCESS FROM THE UNIVERSAL SERVICE FUND; AMENDING SECTIONS 69-3-842, 69-3-843, 69-3-844, AND 69-3-845, MCA; REPEALING SECTION 41, CHAPTER 349, LAWS OF 1997, AND SECTION 6, CHAPTER 187, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-842, MCA, is amended to read:

"69-3-842. ~~(Temporary)~~ Universal service fund established -- purpose. (1) ~~Pursuant to a determination of need, the commission shall establish and administer~~ Upon petition for good cause by a telecommunications carrier or the consumer counsel or on the commission's own motion, the commission shall investigate the need for a fund to assist eligible telecommunications carriers in providing affordable telecommunications services in high-cost areas. This investigation must take into account the evolving nature of universal service as well as changes in federal and state telecommunications support systems, including but not limited to universal service funds and access reform.

(2) If the commission determines that a state universal service fund is necessary to promote the policies in 69-3-841 and is consistent with the public interest, the commission shall establish a state universal service fund. The fund must provide support for the following services:

- (a) voice grade access to the public switched network, including some usage;
- (b) dual-tone multifrequency (DTMF or "touch tone") signaling or its equivalent;
- (c) single-party service;
- (d) access to emergency services, including access to 9-1-1, where available, and access to enhanced 9-1-1 when requested by a telecommunications carrier's local community and when the telecommunications carrier has technical capacity to provide it;
- (e) access to operator services;
- (f) access to interexchange services; and
- (g) access to directory assistance.

~~_____ (2) (3)~~ The fund must support only access to the services listed in subsections ~~(1) (d)~~ (2) (d) through ~~(1) (g)~~ (2) (g) and not support the services themselves.

~~_____ (3) (4)~~ The fund must be administered to ensure that its operation is competitively and technologically neutral.

(5) For the purposes of this section, "interexchange services" means telecommunications long-distance services. ~~(Terminates December 31, 2001 -- sec. 6, Ch. 187, L. 1999.)~~

Section 2. Section 69-3-843, MCA, is amended to read:

"69-3-843. ~~(Temporary)~~ Fund administrator -- commission rulemaking authority.

(1) A fiscal agent and daily administrator must be selected by the commission to receive and distribute funds under 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section.

(2) The fiscal agent must be selected by the commission based upon a competitive bidding process after an opportunity for public comment on the specific qualifications required of the fiscal agent. A telecommunications carrier is not eligible to be the fiscal agent. The duties of the fiscal agent must be determined by a contract consistent with 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section. The contract term of the fiscal agent ~~must expire December 31, 2001~~ may not be for a period greater than 3 years.

(3) The commission may adopt rules for the administration of the fund. ~~fiscal agent shall provide monthly reports of fund activities to the commission and shall provide audits annually by a certified public accountant in a manner determined by and under the direction of the commission.~~

~~———— (4) The fund financial accounts of the fiscal agent must be available at reasonable times to any telecommunications carrier in the state and to the public. The commission may investigate the accounts and practices of the fiscal agent and enter orders concerning the accounts and practices. (Terminates December 31, 2001--sec. 6, Ch. 187, L. 1999.)"~~

Section 3. Section 69-3-844, MCA, is amended to read:

"69-3-844. ~~(Temporary)~~ Contributions to fund. (1) The fiscal agent shall collect contributions from all telecommunications carriers on a ~~monthly~~ quarterly basis, based on a ~~July 1 to June 30 fiscal~~ January 1 to December 31 calendar year. Those contributions must be determined on a percentage of total intrastate retail revenue for all telecommunications carriers registered in the state. If the high-cost mechanisms of the federal universal service program are eliminated, contributions must be determined on a percentage of total intrastate and interstate retail revenue for all telecommunications carriers registered in the state. Initial contributions to the fund may only be collected for the 2-month period prior to the effective date of distributions from the fund and must be calculated as follows:

~~———— (a) determine the total retail revenue for all telecommunications carriers for the immediately preceding calendar year;~~

~~———— (b) determine the total funds needed for distributions in the next fiscal year as authorized pursuant to 69-3-845;~~

~~———— (c) compute a uniform percentage of the amount determined in subsection (1)(a) that will produce an amount equal to the fund total calculated in subsection (1)(b);~~

~~———— (d) adjust the percentage multiplier computed in subsection (1)(c) to recover or reimburse any fund shortfalls or excesses in the previous fiscal year, including uncollectibles, new providers seeking support, cost of administration, and auditing; and~~

~~———— (e) send notice of the current uniform percentage and appropriate remittance forms to each telecommunications carrier at least 2 months prior to the effective date of the application of the percentage.~~

(2) The commission shall adopt ~~procedural~~ rules to govern collection of the contributions required by this section, as well as rules allowing the fiscal agent

and daily administrator to assess late fees and interest on delinquent payments from telecommunications carriers. The fiscal agent is specifically authorized to enforce the contribution requirements of this section through suit in the district courts of Montana, and the prevailing party in an action is entitled to the recovery of costs and attorney fees incurred in that action.

(3) Any funds received by an eligible telecommunications carrier from the state high-cost fund must be used for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

~~—— (3) (4) Any reduction in telecommunications carrier access expenses because of the removal of implicit subsidies inherent in telecommunications carrier access rates must be passed through to Montana end-user customer retail rates. (Terminates December 31, 2001 -- sec. 6, Ch. 187, L. 1999.)~~"

Section 4. Section 69-3-845, MCA, is amended to read:

"69-3-845. ~~(Temporary) Distributions~~ Payments from fund -- calculation of costs. (1) ~~Subject to the requirements of this section, payments~~ Payments from the fund must be made from collected contributions by the fiscal agent to qualifying eligible telecommunications carriers, on a ~~monthly~~ quarterly basis, pursuant to rules adopted by the commission.

(2) Only eligible telecommunications carriers that offer the telecommunications services described in ~~69-3-842(1)~~ 69-3-842(2) to all customers in a designated support area and that advertise the availability of the telecommunications services and the charges for the telecommunications services using media of general distribution may receive support from the fund for the designated support area.

~~—— (3) Distributions must be calculated for the designated support areas established by the commission. In the case of an area served by a rural telephone company, the term "designated support area" means the rural telephone company's Montana service area unless the rural telephone company voluntarily adopts a proxy model for the calculation of the rural telephone company's cost of telecommunications services under subsection (6). After adoption of a proxy model, the rural telephone company's designated support area must be an area designated by the commission, which may be smaller than a wire center. The term designated support area for all other~~

~~telecommunications carriers means a geographic area as established by the commission, which must be smaller than a wire center.~~

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~~----- (4) Support for the services listed in 69-3-842(1) must be calculated as the difference between the costs determined in each designated support area and the affordability benchmark in that support area. The commission shall adopt rules to determine affordability benchmarks.~~

~~----- (5) Except as provided in subsection (6), for rural telephone companies and other eligible telecommunications carriers offering services in a designated support area served by a rural telephone company, the average cost for each line must be calculated and submitted, based on the preceding calendar year, to the fiscal agent as follows:~~

~~----- (a) If an additional eligible telecommunications carrier has not been designated pursuant to 69-3-840(3), the rural telephone company's total unseparated loop cost, as defined by federal separation rule methodology in effect on December 31, 1996, must be added to the switching costs, local transport costs, and customer operations costs assigned to the telecommunications services set forth in 69-3-842(1), which must be calculated using the methodology set forth in federal communications commission jurisdictional separation rules in effect as of December 31 of each calendar year. This total cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.~~

~~----- (b) Upon the designation of an additional eligible telecommunications carrier pursuant to 69-3-840(3) in a designated support area served by a rural telephone company, the additional eligible telecommunications carrier has access to the fund on the same basis as the rural telephone company. Upon the designation of the additional eligible telecommunications carrier, both the carrier and the rural telephone company must receive distributions from the fund based upon the rural telephone company's average cost for each line disaggregated to geographic areas smaller than a wire center. The support for each line for each geographic area must be based upon the rural telephone company's costs, as determined in subsection (5)(a), distributed to each of the geographic areas on the basis of relative distribution factors established by a cost proxy model adopted by the commission.~~

~~----- (6) Except as provided in subsection (5)(b), for companies that are not rural telephone companies and for rural telephone companies voluntarily electing to HB0564 cost proxy model, the average cost for each line in designated support areas must be calculated based on the cost proxy model adopted by the commission. This total per-line cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.~~

~~----- (7) In determining any proxy mechanism under this section, the commission shall use a model that:~~

~~----- (a) targets support to a geographic area smaller than a wire center;~~

~~----- (b) uses acceptable outside plant design and costing principles;~~

~~----- (c) uses reasonable switch design and costing principles;~~

~~----- (d) includes a reasonable share of the joint and common costs of the telecommunications carrier;~~

~~----- (e) meets standards for documenting model logic and the sources of cost data input; and~~

~~----- (f) meets reasonableness tests to ensure that model outputs are representative of costs that can be reasonably expected in the construction of a network and that the network is capable of providing telecommunications services that meet the telecommunications services quality standards of the commission and federal regulators.~~

~~----- (8)(3) An eligible telecommunications carrier providing telecommunications services through resale of another telecommunications carrier's telecommunications services or facilities may not receive support for those telecommunications services or facilities if the rates charged to an eligible telecommunications carrier by the other telecommunications carrier have been reduced by a contribution from universal service funds under this section.~~

~~----- (9)(4) Costs of administering the fund must be paid from the fund. (Terminates December 31, 2001--see. 6, Ch. 187, L. 1999.)"~~

Section 5. Repealer. Section 41, Chapter 349, Laws of 1997, and section 6, Chapter 187, Laws of 1999, are repealed.

Section 6. Effective date. [This act] is effective on passage and approval.

- END -

HB0564

HB 0564, originated in the House. HB0564

I hereby certify that the within bill,

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2016.

President of the Senate

Signed this _____ day
of _____, 2016.